



Sierra Vista City Council
Meeting Agenda
February 25, 2021

Call to Order

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

Roll Call

Invocation – Reverend Chuck Carlson, Sierra Vista Community Church

Pledge of Allegiance

Item 1 Acceptance of the Agenda

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

Public Hearings

Item 2 Resolution 2021-013, Development Code Text Amendment, Reasonable Modifications, Section 151.02.004 – Definitions and Section 151.06.011 - Reasonable Modification, and Declaring a 30-day Public Record

Item 3 Resolution 2021-014, Development Code Text Amendment, Public Hearing Process, Article 151.26 - Conditional Use Permits and Article 151.31-Amendments, and Declaring a 30-day Public Record

New Business

Item 4 Approval of the Special City Council Meeting Minutes of February 9, 2021

Item 5 Approval of the Regular City Council Meeting Minutes of February 11, 2021

Item 6 Resolution 2021-015, Authorizing the City of Sierra to Submit a Grant Application Through WaterSMART Grants: Small-Scale Water Efficiency Projects with the Department of Interior, Bureau of Reclamation (BOR)

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.

February 25, 2021

MEMO TO: Honorable Mayor and City Council

THROUGH: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager

FROM: Matt McLachlan, AICP Community Development Director
Jeff Pregler, AICP, Senior Planner

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
DECLARING A 30-DAY PUBLIC RECORD
PUBLIC HEARING
Resolution 2021-013
Section 151.02.004-Definitions
Section 151.06.011-Reasonable Modification

REQUESTED ACTION:

Approval of Resolution 2021-013, Declaring as Public Record text amendments to the Sierra Vista Development Code as shown on Exhibit A.

RECOMMENDATION:

The City Manager recommends approval.
The Director of Community Development recommends approval.
The Planning & Zoning Commission recommended unanimous approval 3-0.

APPLICANT:

City of Sierra Vista

BACKGROUND:

The City has been approached by members of the community requesting structural modifications to their homes. The citizens have stated that the modifications would allow for an accommodation due to a disability. In some of these instances, the proposed structural modifications do not meet the dimensional standards (setbacks, height, etc.) per the Development Code. Typically, if there is a request to vary the dimensional standards a variance is required. However, because of the strict criteria for a variance, many of the requests for modification would be denied.

The federal and state Fair Housing Acts, state that, "prohibited discrimination includes a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing

premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.” Since the City promotes inclusiveness and to be compliant with the federal and state fair housing laws, staff is recommending the creation of a reasonable modification request process, which would allow flexibility and expedited reviews for applicants that meet specific criteria.

ANALYSIS

Section 151.02.004, Definitions

The City is proposing the addition of three definitions to help clarify the processing of reasonable modification requests. The three terms included are: “Disability”, “Fair Housing Laws”, and “Reasonable Accommodation”. The term “Disability” is replacing the existing term “Development Disability” because the definition of “Disability” is all encompassing and better describes the meaning of disability. “Reasonable Modification” is also being defined which helps with the implementation of the Reasonable Modification review process.

Section 151.06.011, Reasonable Modification

This Section is being added to the Development Code and includes a review and approval process to allow for reasonable modifications to homes for the purpose of accommodating the residents living with a disability.

The first amendments to this Section include the application and submittal processes. The application will be available both at City Hall and on the City website. The website has been updated to reflect the various special needs of the disabled community and therefore should make completing the form easier for all citizens. The completed application can be submitted online which will be directed to the applicable staff member reviewing the request. Appropriate documentation will be required as part of the submittal, which will include written medical certification of a disability and its effects on the person’s medical, physical, or mental limitations. Due to privacy issues, the City will not be requesting disclosure of the specific disability.

The next amendments outline the review and approval process. Reasonable modifications to a home will include requests to reduce building setbacks, increase building height maximums, or increased lot coverage areas. As stated previously, the process to vary these dimensional standards requires a Variance hearing before a Hearing Officer. These hearings are open to the public and allow neighboring property owners to provide comment. Due to the strict criteria for a variance, many of the requests for reasonable modification would be denied. These denials would conflict with the Fair Housing laws. Therefore, to ensure compliance, all requests for reasonable modification will be reviewed by the Director of Community Development.

An advantage to keeping the review at the staff level will be that the individual’s disability will remain private as opposed to potentially being disclosed at a public hearing. Review of the reasonable modification will require notification to the affected adjacent property owner. The property owner can provide comment which will be considered during the review process. The City can place a condition on the approval to minimize impacts on surrounding properties if deemed necessary.

Included in the language are findings which staff will use to make their final determination on the request. Any appeals to the Director of Community Development's decision shall be heard by a Hearing Officer.

Any reasonable modifications requiring home additions will need to submit building plans and meet all requirements of the building and fire codes.

PLANNING & ZONING COMMISSION

The Commission held a public hearing on this item on February 16, 2021 and voted to unanimously approve the amendments.

COMMISSION ON DISABILITY ISSUES

The Commission on Disability Issues (CoDI) reviewed the proposed text amendments at their December 9, 2020 meeting. There was a unanimous consensus to approve the amendments.

PUBLIC COMMENTS

The City placed an ad in the newspaper which described the amendments and provided the date and time of the public hearings. The amendments are also posted on the City website for public viewing. No public comments have been received regarding the amendments.

Attachments:

Resolution

Exhibit A, Proposed Text Amendments

RESOLUTION 2021-013

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; DECLARING A 30-DAY PUBLIC RECORD PERIOD FOR AMENDMENTS TO CHAPTER 151 OF THE CITY CODE OF ORDINANCES, THE DEVELOPMENT CODE, AS SHOWN IN EXHIBIT A, ATTACHED HERETO; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICES AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

WHEREAS, in accordance with established policy and development code procedures, the City of Sierra Vista has proposed text amendments to the following Development Code Sections; Section 151.02.004-Definitions; Section 151.06.011-Reasonable Modification; and

WHEREAS, Article 151.31 of the Development Code requires that the City Council review and decide on all applications for text amendments; and

WHEREAS, per Article 151.31, the Planning & Zoning Commission recommended approval of the amendments to City Council; and

WHEREAS, under the provisions of Section 9-802 of the Arizona Revised Statutes, the proposed amendments to the City's Development Code shall be declared a matter of public record for a period of 30 days prior to being passed and adopted by ordinance.

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 policy of the City of Sierra Vista declaring proposed text amendments to the Development Code as a public record be, and hereby is, reaffirmed.

SECTION 2

That the certain document entitled Exhibit A, proposed amendments to Development Code attached hereto, copies of which are on file in the office of the City Clerk, is hereby declared a 30-day public record.

SECTION 3

That 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 25TH DAY OF FEBRUARY 2021.

FREDERICK W. MUELLER
Mayor

APPROVED AS TO FORM:

ATTEST:

NATHAN WILLIAMS
City Attorney

JILL ADAMS
City Clerk

PREPARED BY:

Jeff Pregler, AICP
Senior Planner

EXHIBIT A

ARTICLE 151.02 DEFINITIONS

Section 151.02.004 Definitions

Americans with Disabilities Act: 42 U.S.C. Subsection 1281 et. seq. Pub. L 101-336 and implementing regulations at 28 C.F.R. parts 35 and 36.

~~Developmental Disability~~

~~Physical or mental impairment such as autism, cerebral palsy, epilepsy, or mental retardation.~~

Disabled Person. A person who has a physical or mental impairment, or both, that substantially limits one or more major life activities, including caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

Fair Housing Laws- means (1) the Federal Fair Housing Act (42 U.S.C. § 3601) and (2) A.R.S. Title 41, Chapter 9, Article 7

Reasonable Modification- means providing disabled persons flexibility in the application of a structure's dimensional standards and lot coverage area requirements and procedures, when necessary to eliminate barriers to housing opportunities. It includes such things as reduced building setbacks, building height that exceeds the maximum requirements, or increasing the lot coverage areas. Reasonable accommodation does not include an accommodation which would (1) impose an undue financial or administrative burden on the city or (2) require a fundamental alteration in the nature of the city's land use patterns and zoning codes.

ARTICLE 151.06 SPECIAL REGULATIONS FOR PARTICULAR USES

Section 151.06.011 Reasonable Modification

A. Intent

1. It is the City's policy to provide individuals with disabilities reasonable modifications in regulations and procedures to ensure equal access to housing, and to facilitate the development of housing. The intent of this Section is to provide a procedure under which a disabled person may request a reasonable modification in the application of a structure's dimensional standards or to the lot coverage areas.

2. This Section is based on requirements of the federal and state fair housing laws and is distinct from the requirements for a variance set forth in Article 151.30.

B. Requesting reasonable modification.

1. Request. A disabled individual may request a reasonable modification to a structure's dimensional standards or to the lot coverage area. A reasonable modification cannot waive a requirement for a conditional use permit when otherwise required or result in approval of uses otherwise prohibited by the City's land use and zoning regulations.

2. Availability of information. Information regarding this reasonable modification procedure will be available at City Hall and on the City websites, and be made available in any other manner as determined by the City.

3. Assistance. The City will provide reasonable assistance to any applicant making a request.

4. Balancing rights and requirements. The City will attempt to balance (1) the privacy rights and reasonable request of an applicant for confidentiality, with (2) the land use requirements for notice, factual findings and rights to appeal, in the city's requests for information, considering an application, preparing written findings and maintaining records for a request for reasonable modification.

C. Application requirements.

1. Application. The applicant shall submit a request for reasonable accommodation on a form provided by the City. The application shall include the following information:

a. The current actual use of the property;

b. The basis for the claim that the individual is considered disabled as defined in this Code and in the fair housing laws as well as current, written certification of need for the requested accommodation from a medical doctor.

c. The rule, policy, practice and/or procedure of the city for which the request for modification is being made, including the Development Code regulation from which reasonable modification is being requested;

d. The type of accommodation sought;

e. The reason(s) why the modification is reasonable and necessary for the needs of the disabled person(s). Where appropriate, include a summary of any potential means and alternatives considered in evaluating the need for the modification;

f. Copies of memoranda, correspondence, pictures, plans or background information reasonably necessary to reach a decision regarding the need for the accommodation; and

g. Other supportive information deemed necessary by the City to facilitate proper consideration of the request, consistent with fair housing laws.

2. Review with other land use applications. If the project for which the reasonable accommodation is being requested also requires some other discretionary approval (such as conditional use permit, architectural review, general plan amendment, zoning amendment, subdivision plat), then the applicant shall submit the reasonable modification application first for a determination, before proceeding with the other applications.

3. Fee. The fee for an application for reasonable accommodation shall be established by resolution of the city council.

D. Approval authority – Notice – Decision.

1. Approval authority.

The Director of Community Development (Director) has the authority to review and decide upon requests for reasonable modifications, including whether the applicant is a disabled individual as defined in this Code.

2. Notice. The City shall notify, by mail, abutting property owner(s) most affected by the reasonable accommodation. The notice shall include a sketch plan of the site illustrating the modification and contact information for providing any comments on the application.

3. Decision. The Director shall render a decision within 30 days after the application is complete, and shall approve, approve with conditions or deny the application, based on the findings set forth in Section E. The decision shall be in writing and mailed to the applicant.

If the application for reasonable modification involves another discretionary decision, the reviewing body for that decision shall accept as final the determination regarding reasonable modification by the Director.

E. Findings – Other requirements.

1. Findings. The reviewing authority shall approve the application, with or without conditions, if it can make the following findings:

- a. The housing will be used by a disabled person;
- b. The requested modification is necessary to make specific housing available to a disabled person;
- c. The requested modification would not impose an undue financial or administrative burden on the City; and
- d. The requested modification would not require a fundamental alteration in the City's land use and zoning regulations.

2. Other requirements.

- a. An approved request for reasonable modification is subject to the applicant's compliance with all other applicable zoning regulations.
- b. Where appropriate, the reviewing authority may condition its approval on any or all of the following:
 - (1) Measures to reduce the impact on surrounding uses;
 - (2) Measures in consideration of the physical attributes of the property and structures;
 - (3) Other reasonable accommodations that may provide an equivalent level of benefit; and
 - (4) Other conditions necessary to protect the public health, safety and welfare.

F. Appeal.

A decision by the Director may be appealed by any aggrieved person to the Hearing Officer in accordance with the appeal procedures of Article 151.30.

February 25, 2021

MEMO TO: Honorable Mayor and City Council

THROUGH: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager

FROM: Matt McLachlan, AICP Community Development Director
Jeff Pregler, AICP, Senior Planner

SUBJECT: REQUEST FOR AGENDA ITEM PLACEMENT
DECLARING A 30-DAY PUBLIC RECORD
PUBLIC HEARING
Resolution 2021-014
Article 151.26-Conditional Use Permits
Article 151.31-Amendments

REQUESTED ACTION:

Approval of Resolution 2021-014, Declaring as Public Record text amendments to the Sierra Vista Development Code as shown on Exhibit A.

RECOMMENDATION:

The City Manager recommends approval.
The Director of Community Development recommends approval.
The Planning & Zoning Commission recommended unanimous approval 3-0.

APPLICANT:

City of Sierra Vista

BACKGROUND:

The Community Development Department regularly reviews current code provisions and procedures to identify ways in which the staff and the City can improve efficiencies, clarify requirements and help residents and business owners move through the system more easily. This practice is consistent with previous City Council Strategic Plan initiatives which have mandated the reduction of obsolete or unnecessary code provisions in expectation of making city government accountable, collaborative and efficient. The proposed text amendments provide for a more streamlined approval process by clarifying requirements for rezonings, text amendments, and conditional use permits, as outlined by Arizona Revised Statutes.

ANALYSIS

The current review and approval process for text and map amendments (rezonings), and conditional use permits requires public hearings before the Planning & Zoning Commission and City Council. The Commission's role is to provide a recommendation to Council at a public hearing, which is then transmitted to the Council for their review and final decision. The Development Code and Arizona Revised Statutes currently require that map and text amendments be noticed a minimum of 15-days prior to the hearings. The conditional use permit public hearing process is not necessarily regulated by Arizona Revised Statutes but was written to include the same public notice requirements as the text and map amendments for consistency. As part of the public notification requirements, staff is required to advertise the hearings in the newspaper, post a sign on the requested property (if applicable), and send out notification to all property owners within 500 feet of the requested property (if applicable). From the date of application submittal to the City Council's final decision, the process takes approximately 45-60 days.

The Arizona Revised Statutes does allow for the public hearing processes to be expedited. According to A.R.S. 9-462.04(D), "*If the planning commission has held a public hearing, the governing body may adopt the recommendations of the planning commission without holding a second public hearing if there is no objection, request for public hearing.*" In other words, if the amendment or conditional use permit is straightforward with no objections, a City Council public hearing would not be required. Rather, the Council could accept the Commission's findings at their next scheduled meeting which does not need to be advertised as a public hearing. However, should there be a protest or request for a public hearing by an affected party, then staff could still advertise a public hearing before City Council. Removing the second public hearing requirement does allow for a more efficient and accelerated approval and review process. The language from the Arizona Revised Statutes has been included in both the Conditional Use Permit and Amendments Articles of the Development Code.

Arizona Revised Statutes also includes provisions to notify the military airport of any map amendments in the City. The notification is to ensure that there are no conflicts regarding the compatibility of the military operations and to ensure no adverse impacts on health and safety. Arizona Revised Statutes further includes the provision that if there is a conflict with a rezoning, that the City Council is required to hold a public hearing to discuss the issues raised by the military installation. The current practice of the City is to notify the Fort Huachuca Encroachment Board of any proposed project in the City and inquire about compatibility issues. If there is a compatibility issue or question raised by the Board, staff works with the applicant to resolve any issues prior to advancing the project. Adding the language to both Articles is codifying current practice and ensuring consistency with state law.

Additional amendments relating to Article 151.26, *Conditional Uses*, include formatting changes, clarifying language, and removal of obsolete or duplicative text. For example, the locational standards section is being removed because the language conflicts with the Matrix of Use Permissions and duplicative requirements are contained in the Commission findings in Section 151.26.006. These findings have been expounded to help the Commission and City Council determine the justification of a conditional use permit.

Additional amendments to Article 151.31, *Amendments*, include formatting changes, clarifying language, and removal of obsolete or duplicative language. Most of Section 151.31.004, *Notice of Public Hearing*, has been removed because the order of proceedings, and rules of procedure are included in the Boards and Commissions Practice and Procedures Guidelines. Again, the findings for map and text amendments have been revised to provide clear justification for the request.

PLANNING & ZONING COMMISSION

The Commission held a public hearing on this item on February 16, 2021 and voted to unanimously approve the amendments.

PUBLIC COMMENTS

The City placed an ad in the newspaper which described the amendments and provided the date and time of the public hearings. The amendments are also posted on the City website for public viewing. No public comments have been received regarding the amendments.

Attachments:

Resolution

Exhibit A, Proposed Text Amendments

RESOLUTION 2021-014

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; DECLARING A 30-DAY PUBLIC RECORD PERIOD FOR AMENDMENTS TO CHAPTER 151 OF THE CITY CODE OF ORDINANCES, THE DEVELOPMENT CODE, AS SHOWN IN EXHIBIT A, ATTACHED HERETO; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICES AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

WHEREAS, in accordance with established policy and development code procedures, the City of Sierra Vista has proposed text amendments to the following Development Code Sections: Article 151.26-Conditional Use Permits Article 151.31-Amendments; and

WHEREAS, Article 151.31 of the Development Code requires that the City Council review and decide on all applications for text amendments; and

WHEREAS, per Article 151.31, the Planning & Zoning Commission recommended approval of the amendments to City Council; and

WHEREAS, under the provisions of Section 9-802 of the Arizona Revised Statutes, the proposed amendments to the City's Development Code shall be declared a matter of public record for a period of 30 days prior to being passed and adopted by ordinance.

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 policy of the City of Sierra Vista declaring proposed text amendments to the Development Code as a public record be, and hereby is, reaffirmed.

SECTION 2

That the certain document entitled Exhibit A, proposed amendments to Development Code attached hereto, copies of which are on file in the office of the City Clerk, is hereby declared a 30-day public record.

SECTION 3

That 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 25TH DAY OF FEBRUARY 2021.

FREDERICK W. MUELLER
Mayor

APPROVED AS TO FORM:

ATTEST:

NATHAN WILLIAMS
City Attorney

JILL ADAMS
City Clerk

PREPARED BY:

Jeff Pregler, AICP
Senior Planner

EXHIBIT A

ARTICLE 151.26 CONDITIONAL USES

Sections:

- 151.26.001 Purpose
- 151.26.002 Conditional Uses
- 151.26.003 [Review Considerations](#)~~Authority and Council Action~~
- ~~151.26.004 Locational Criteria~~
- 151.26.004⁵ Application for Conditional Use
- 151.26.005⁶ Notice of Public Hearing
- 151.26.006⁷ Consideration by the Commission
- 151.26.007⁸ Council Action
- 151.26.008⁹ Revocation of Conditional Use Permit
- 151.26.009¹⁰ Automatic Termination of Conditional Use
- 151.26.010¹¹ Fees

Section 151.26.001

Purpose

Each district in the City contains designated permitted uses as a matter of right. In addition to the designated uses in each district, there are conditional uses, neither absolutely permitted as a right nor prohibited by law, which may be compatible within the district. These are privileges, in a sense, and must be applied for and approved by the City. It is the intent of this Article to provide a set of procedures and standards for conditional uses of land or structures which, because of their unique characteristics relative to locational features, design, size, operation, circulation, and public interest or service require special consideration in relation to the welfare of adjacent properties and the community as a whole. It is the purpose of the regulations and standards set forth below to:

- A. Allow, on one hand, practical latitude for use of land and structures, but at the same time maintain adequate provision for the protection of the health, safety, convenience, and general welfare of the community and adjacent properties; and
 - B. Provide for periodic review of Conditional Use Permits to provide for further conditions to more adequately assure conformity of such uses to the public welfare.
- (Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02)

Section 151.26.002

Conditional Uses

Conditional uses shall be those established by the Matrix of Use Permissions by Zoning District under Section 151.22.006 of this Code and shall be subject to the approval procedures of this Article.

(Ord. 743, passed 4-10-86; Am. Ord. 752, passed 8-14-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 834, passed 3-9-89; Am. Ord. 854, passed 1-25-90; Am. Ord. 877, passed 2-28-91; Am. Ord. 882, passed 4-25-91; Am. Ord. 888, passed 10-10-91; Am. Ord. 896, passed 1-23-92; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2004-002, passed 2-26-04; Am. Ord. 2011-012, passed 9-22-11; Am. Ord. 2016-002, passed 2-25-16)

Section 151.26.003

Review Considerations Authority and Council Action

A. ~~The Council may approve, approve with conditions, or deny the application for a Conditional Use Permit.~~ In permitting a new conditional use or the alteration of an existing conditional use, the Council can impose, in addition to those standards and requirements expressly specified by this Code, additional conditions which it finds necessary to avoid a detrimental environmental impact and to otherwise protect the best interest of the surrounding area or the community as a whole. These conditions can include, but are not limited to, the following:

1. Limiting the manner in which the use is conducted, including restricting the time a certain activity can take place and restraints to minimize such environmental effects as noise, vibration, air pollution, glare, and odor.
2. Establishing special yard, open space, lot area, or dimensional requirements.
3. Limiting the height, size, or location of a building or other structure or use.
4. Designating the size, number, location, and nature of vehicle access points.
5. Designating the size, location, screening, drainage, surfacing, or other improvements of a parking area or loading area.
6. Limiting or otherwise designating the number, size, location, height, and lighting of signs.
7. Limiting the intensity of outdoor lighting and requiring light shielding.

8. Requiring diking, screening, landscaping, or another facility to protect adjacent or nearby property and designate standards for its installation and maintenance.

9. Designating the size, height, location of screening, and materials of fencing.

10. Protecting and preserving existing trees, vegetation, water resources, wildlife habitat, or another significant natural resource.

(Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02)

~~Section 151.26.004~~

~~Locational Criteria~~

~~A. The provisions of this Section are designed to provide siting criteria for the conditional uses specified herein and guidelines for the imposition of additional conditions not specifically provided for herein, to the end that such uses will:~~

~~—1. Be consistent with the intent and purpose of the district in which the use is proposed to locate such use, meet the requirements of the General Plan with regard to providing benefit to the general welfare of the public, and fill a probable need of the public which can best be met by a conditional use at this time and in this place.~~

~~—2. Comply with the requirements of the district within which the conditional use is proposed and in accordance with conditions attached to such use under the authority of this Article.~~

~~B. Conditional uses shall be located subject to the following specific standards:~~

~~—1. Buffering, screening or other means shall be used where necessary to protect the privacy and safety of neighboring properties.~~

~~—2. Solid waste landfills and transfer stations, natural gas storage, sewage treatment plants, and electrical generating facilities shall not be in or adjacent to established residential areas.~~

~~—3. Solid waste landfills and transfer stations, natural gas storage, sewage treatment plants and electrical generating facilities will not provide access from local residential or collector streets. Recycling centers, water reservoirs, telephone communication and switching facilities, runoff detention facilities and City or County maintenance facilities shall not be provided access from local residential streets.~~

~~—4. The site layout promotes energy conservation and user convenience, as well as operational efficiency.~~

~~—5. The site layout conforms to the established street and circulation pattern.~~

~~—6. Noise levels and lights from the facility will not interfere with adjacent land uses. (Ord. 743, passed 4-10-86; Am. Ord. 854, passed 1-25-90; Am. Ord. 1151, passed 11-14-02)~~

Section 151.26.0045

Application for Conditional Use

A. A request for a conditional use, modification of an existing conditional use permit, or a review of an existing Conditional Use Permit shall be initiated by a property owner or the authorized agent by filing an application with the City. Such application shall include:

1. Complete information regarding the proposed location, area, height, bulk, and placement of such use and shall be accompanied by a plot plan prepared in accordance with the provisions of Article 151.18, Site Plan.

~~2. A vicinity ownership map, drawn to scale, showing all parcels in the vicinity adjacent to and surrounding the property proposed for conditional use within a radius of 500 feet of the exterior boundaries of the property.~~

~~—3. Two sets of a typed, printed, or electronic list containing the names and mailing addresses of the owners of parcels within a radius of 500 feet of the exterior boundaries, and identified by the same number as on the vicinity ownership map. One set shall be printed on mailing labels. Correct zip codes must be shown for each address.~~

24. A neighborhood meeting shall be required for all conditional uses that are in, abut, or are separated by a street or alley from any residential zoning district. Neighborhood meetings are to be held ~~subsequent to the submittal of the application, but~~ no later than seven7 days prior to the Commission public hearing. The applicant is responsible for organizing, scheduling, and supplying all materials for the neighborhood meeting. All property owners within 500 feet of the exterior boundaries of the property shall be notified. The applicant will provide the City with information on the meeting date, time, location, and purpose of the meeting. The applicant shall also provide a copy of the letter sent to the adjacent property owners notifying them of the meeting, and a written summary of the meeting to the City.

B. An application filed pursuant to this section shall be accompanied by the required fee. Such fee shall be determined according to a schedule established by resolution of the Council and posted in the office of the City Clerk.

C. The Department of Community Development shall review each application for technical compliance with established application requirements and shall formally accept or reject the application within three working days.

(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2004-014, passed 12-9-04)

Section 151.26.0056

Notice of Public Hearing

All applications for Conditional Use Permits shall be considered by the Commission and Council ~~at a public hearing, advertised~~ in accordance with ~~Section 151.26.006~~[this Article](#).

A. Public Notice Requirements

Notice of the time, date, and place of the public hearing, including a general explanation of the Conditional Use Permit will be given at least 15 days before the hearing in the following manner:

1. Newspaper. Each notice of public hearing will be published at least once in a newspaper of general circulation published or circulated in the City.
2. Posting at Public Locations. Each notice of public hearing will be posted at locations identified as posting areas by the City Clerk.
3. Posting on Property. A notice will be posted on the site and shall be printed so that the words, "Conditional Use Permit" and the date and time of the public hearing are visible from a distance of 100 feet.
4. Certified Mailing. A notice will be mailed by certified mail to the owner and applicant or the designated agent.
5. Property Owner Mailing. All property owners within 500 feet of the exterior boundaries of the land subject to the application.

~~Unless otherwise provided, addresses for the required mail public hearing notice will be obtained by the property owner and applicant or his agent, from the County's real property tax records.~~The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with this requirement. In addition, the City may provide notice to others if it has reason to believe that they are affected or otherwise represent an interest that may be affected by the proposed development.
6. Interested Parties. A notice shall be sent to any persons who register their names and addresses with the City as being interested in receiving such notices, for a reasonable fee.

7. Adjoining Political Jurisdictions. Notice shall be sent to municipalities or political jurisdictions that abut the property subject to the application.

(Ord. 2003-021, passed 11-25-03; Am. Ord. 2004-014, passed 12-9-04)

Section 151.26.006~~7~~

Consideration by the Commission

A. All applications for Conditional Use Permits shall be ~~first~~ considered by the Commission at a public hearing, advertised, and conducted in accordance with the provisions of Section 151.26.006.

B. The Commission shall recommend approval, approval with conditions, or denial of the request based on compliance with the following findings: ~~review each application for compliance with the criteria and requirements set forth in Article 151.26 and forward a recommendation of approval, approval with conditions, or denial by resolution to the Council.~~

1. The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements, and natural features.

2. Noise levels and lights from the facility do not interfere with adjacent land uses.

2. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.

3. The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the district.

4. The proposed use satisfies those goals, objectives, and policies of the General Plan that are applicable to the proposed use specifically with regard to providing benefit to the general welfare of the public, and filling a probable need of the public which can best be met by a conditional use.

5. Be consistent with the intent and purpose of the district in which the use is proposed to locate such use.

C. After the hearing, the Commission shall render a decision in the form of a written recommendation to the Council and to the applicant.

The recommendation shall include the reasons for the recommendation and be transmitted to the Council and the applicant by the Director of Community Development.

(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

Section 151.26.007~~8~~

Council Action

~~A. If the Commission has held a public hearing, T~~he Council may adopt the recommendations of the Commission without holding a second public hearing if there is no objection, request for public hearing, or other protest.

B. If an objection, request for public hearing, or other protest is formally submitted, a public hearing shall be required before the Council. The public hearing shall be advertised and meet the public notice requirements as stated 151. 26.006. Requests for public hearing, objections, or protests, shall be submitted no more than seven days after the Commission has rendered their decision.

a. The Council shall act to approve, approve with conditions, or deny the request. Any decision must include a determination on whether the request is compliant with findings as stated in 151.26.007.(B). The Director of Community Development shall notify the applicant of the action.

~~A. After a public hearing advertised and conducted in accordance with the provisions of Section 151.26.006, the Council can approve, approve with conditions, or deny the application for a conditional use, provided the applicant submits evidence substantiating that all the requirements of this Code relative to the proposed use are satisfied, and further that the applicant demonstrates the proposed use also satisfies the following criteria:~~

~~—1. The characteristics of the site are suitable for the proposed use, considering size, shape, location, topography, existence of improvements, and natural features.~~

~~—2. The proposed development is timely, considering the adequacy of transportation systems, public facilities and services existing or planned for the area affected by the use.~~

~~—3. The proposed use will not alter the character of the surrounding area in any manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the district.~~

~~—4. The proposed use satisfies those goals, objectives, and policies of the General Plan that are applicable to the proposed use.~~

B. Written notice of the Council's decision shall be provided by the City to:

1. The applicant; and

2. Any person notified of the application for a conditional use pursuant to Section 151.26.006.

(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

Section 151.26.0089

Revocation of Conditional Use Permit

A. Any previously granted Conditional Use Permit may be revoked by the Council, after a hearing conducted in the manner required for approval of a Conditional Use Permit initially, upon any one of the following grounds:

1. Failure to comply with the conditions of approval.

2. Discontinuance of the use for a period in excess of one year.

3. Failure to comply with other applicable provisions of the General Plan regarding design, dimensional, or use requirements.

4. A change in the General Plan or standards of the district within which the use is located that have the effect of no longer allowing a new Conditional Use Permit application to be considered in such district.

B. Revocations initiated under Section 151.26.009.A.1 or 2 above can take place immediately after approval of the conditional use permit. Revocations initiated under Section 151.26.009.A.1, 2, and 3 above shall have the effect of making the previously granted conditional use permit void until a new application is submitted and granted. Revocations initiated under Section 151.26.009.A.4 above shall have the effect of making the previously granted conditional use a non-conforming use.

(Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

Section 151.26.00910 Automatic Termination of Conditional Use

A. Unless otherwise provided by the Council in the resolution granting approval of the Conditional Use Permit, a Conditional Use Permit shall automatically become null and void

one year after the effective date upon which it was granted unless one of the following events occurs:

1. The applicant or his successor in interest has secured a building permit within said one-year period, if a building permit is required, and has actually commenced construction of the building or structure authorized by the permit within said one- year period.

2. The applicant or his successor in interest has commenced the activity or installation of the facility or structure authorized by the Conditional Use Permit within the one- year period.

B. The applicant may submit a request to the Council for an extension of time on the conditional use permit to avoid the permit becoming null and void. The request for extension must be filed with the City prior to the expiration of the times established by Section A above. The Council can, in the resolution granting such Conditional Use Permit, provide for an extension of time beyond one year.

(Ord. 743, passed 4-10-86; Am. Ord. 1151, passed 11-14-02; Am. Ord. 2003-021, passed 11-25-03)

Section 151.26.0101

Fees

Conditional Use Permit fees shall be determined according to a schedule establish by resolution of the Council and posted in the Office of City Clerk.

(Ord. 2003-021, passed 11-25-03)

ARTICLE 151.31
AMENDMENTS

Sections:

- 151.31.001 Amendments
- 151.31.002 Types of Amendments; Initiation of Same
- 151.31.003 Application for Amendment
- 151.31.004 Notice of Public Hearing
- 151.31.005 [Commission Hearings and Recommendation](#)~~Public Hearing of Applications~~
- 151.31.006 [Council Hearings and Decision](#)~~Appeal from Denial of Amendment~~
- 151.31.007 Protest Against Amendments
- 151.31.008 Reconsideration of Denied Zoning District Map Amendments
- 151.31.009 Fees
- ~~151.31.010 Zoning District Map Amendments Conditioned Upon Site Plan Approval~~

Section 151.31.001
Amendments

The Council may from time to time, upon recommendation of the Commission, amend, supplement, change or repeal the regulations, restrictions and district boundaries herein established. All amendments to this Code and the Zoning District Map shall be consistent with the adopted General Plan, as amended, and shall be a reflection of the City's land use planning goals. Requests to amend this Code may be initiated by the Council or the Commission on their own motions, or by petition from property owners as hereinafter set forth.

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

Section 151.31.002
Type of Amendments; Initiation of Same

A. Text Amendment. The application for an amendment to the text of this Code shall state in particular the article, section, subsection, and paragraph sought to be amended. The application for amendment shall contain the language of the proposed amendment and shall recite the reasons for the proposed change in the text.

B. Map Amendment. An application which seeks to change or modify the zoning classification imposed upon a particular piece of property by the district map.

C. The initiation of a change to the text and/or Zoning District Map may be accomplished by one of the following methods:

1. A majority of the property owners in the area of proposed change or their authorized agents; or
2. A majority vote of the Council; or
3. A majority vote of the Commission.
(Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

Section 151.31.003

Application for Amendment

A. **Application Form for Text Amendment.** Application for a text amendment ~~of the text of this Code~~ shall be made to the City ~~on a standard form provided for this purpose~~ and include the required information and documentation as specified on the form. The Department of Community Development shall review each application for technical compliance with established application requirements and shall formally accept or reject the application within three working days. The application submittal, at a minimum shall include:

1. The applicant's name, address, and interest in the amendment; and
2. The language of the proposed amendment to the Code; and
3. Statements in support of the application, including a list of the present conditions justifying the proposed amendment.

B. **Application for Zoning District Map Amendment.** An application for an amendment to the Zoning District Map shall be made to the City and include the required documentation as specified on the form. The application submittal, at a minimum, shall include the following:

1. Name and address of the applicant. If the applicant is not the owner of the property, the name and address of the owner shall be supplied along with the authorization that the applicant is the agent of the owner and may apply for the permit. Proof of ownership must be submitted with the application. The ownership information shall be as documented in the Cochise County Recorder's Office records. ~~The name and address of all owners of the property for which a change is sought, together with proof of ownership. Proof of ownership shall consist of a copy of a title report issued not more than 30 days prior to the date of the application by a title company authorized to conduct business in the State of Arizona.~~

~~In the event that the application includes other property in addition to that owned by the applicant, there shall be filed by the applicant, a petition in favor of the request signed by~~

~~the real property owners representing at least 75 percent of the land area to be included in the application. Such petition shall be filed and checked for authenticity of ownership before the application is accepted by the City. Proof of ownership shall consist of a copy of a title report as required above.~~

~~In the event that the application includes properties owned by more than one owner, the City shall notify, by certified mail, all property owners as listed on the County Assessor's records included in the area proposed to be changed by the application. Such notice shall be postmarked not later than 15 days prior to any Commission public hearing on the application.~~

~~—2. Where the applicant represents another person, firm, partnership or corporation, the proof of agency, including a list of every real party in interest, whether a beneficiary of a trust or otherwise, shall be provided to the City.~~

~~— a. If the land is owned by a corporation, proof of agency shall consist of a corporate resolution designating the individual to act as an agent. The corporate resolution must be certified by the secretary of the corporation and authenticated by the corporate seal, or acknowledged in the form prescribed by A.R.S. § 33-506.~~

~~— b. If the land is owned by a partnership, proof of agency shall consist of a written document of the partner(s) designating an individual to act as agent. The document must be certified and acknowledged in the form prescribed by A.R.S. § 33-506. If the land is owned by an individual, proof of agency shall consist of a written document designating an individual to act as agent. The document must be certified and acknowledged in the form prescribed by A.R.S. § 33-506.~~

~~23. A preliminary site plan of the property showing the use(s) proposed for the site, showing setbacks, heights, parking areas, landscaping, and other information to assist in the evaluation of the request. The proposed amendment to the district classification or boundary.~~

34. A map drawn to scale showing the existing and proposed district boundaries and an accurate legal description of the area being proposed for the amendment. If the legal description of the property is less than the entirety of the lot, block or parcel described in a recorded subdivision, a legal description and map shall be prepared and certified by a registered surveyor licensed by the State of Arizona.

4. Appropriate public service and utility information, including how the project will be served by water, sewer, gas, electricity, telephone, and other utilities.

~~—5. A vicinity ownership map drawn to scale showing all parcels in the vicinity adjacent to and surrounding the property proposed to be changed within a radius of 500 feet of the exterior boundaries of the property.~~

~~—6. Two sets of a typed, printed, or electronic list containing the names and mailing addresses of the owners of parcels within a radius of 500 feet of the exterior boundaries and identified by the same number as on the vicinity ownership map obtained from the County's real property tax records. One set shall be printed on mailing labels. Correct zip codes must be shown for each address.~~

5-7. Statements reflecting the present conditions justifying the proposed amendment; statements showing that the parcel fulfills the criteria for establishment of the proposed zoning district or, in the absence of the ability to comply, statements as to why the presumption against the rezoning should be overcome; and any other factors or reasons in support of the proposed amendments.

6 Public service information, including how the project will impact local services such as schools, police, parks, fire service, sanitary pick-up, and other similar services. Included shall be how the developer will provide public paved roads, provisions of parks and playgrounds for residential development, and other services required by the project as applicable.

78. A neighborhood meeting shall be required for all Zoning District Map amendments. Neighborhood meetings shall be held ~~are to be held subsequent to the submission of the application form, but~~ no later than seven days prior to the Commission public hearing. The applicant is responsible for organizing, scheduling, and supplying all materials for the neighborhood meeting. All property owners within 500 feet of the exterior boundaries of the property shall be notified. The applicant will provide the City with information on the meeting date, time, location, and purpose of the meeting. The applicant shall also provide a copy of the letter sent to the adjacent property owners notifying them of the meeting, and a written summary of the meeting to the City.

~~—9. A completed Development Impact Questionnaire stating the impacts that the map amendment will have on the community.~~

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 875, passed 1-10-91; Am. Ord. 2004-014, passed 12-9-04)

Section 151.31.004

Notice of Public Hearing

~~All applications for text and map amendments shall be considered by the Commission and the Council at public hearings advertised in accordance this Section.~~

A. Public Notice Requirements. Notice of the time, date, and place of the public hearing, including a general explanation of the text or map amendment will be given at least 15 days before the hearing in the following manner:

1. Each notice of public hearing for text or map amendments shall be published at least once in a newspaper of general circulation published and posted at locations identified as posting areas by the City Clerk.

2. Notice of the time, date and place of the hearing on Zoning District Map amendments shall be posted on the affected property. A posted notice shall be printed so that the following are visible from a distance of 100 feet: the word “zoning,” the present district classification, the proposed zoning district classification and the date and time of the hearing.

3. Notice of the time, date and place of the hearing for a text or map amendment shall be mailed by certified mail to the owner and applicant or [their](#) ~~his~~ agent.

4. Notice of the time, date and place of hearings on Zoning District Map Amendments shall be sent to all owners of property within 500 feet of the exterior boundaries of the property. The failure of a property owner to receive notice shall not invalidate an action if a good faith attempt was made to comply with the requirements of this Code for notice. In addition to persons whom receive notice as required by the matter under the consideration, the City may provide notice to others if it has reason to believe that they are affected or otherwise represent an interest that may be affected by the proposed development.

5. In proceedings involving Zoning District Map Amendments for land that abuts other municipalities or un-incorporated areas of the County or a combination thereof, copies of the notice of public hearing shall be sent to the planning agency of such governmental unit controlling such abutting land.

[6. In proceedings involving Zoning District Map Amendments that has land located within the territory in the vicinity of a military airport or ancillary military facility as defined in section A.R.S. 28-8461, a copy of the notice of public hearing shall be sent by first class mail to the Fort Huachuca Encroachment Board.](#)

~~7~~6. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed in paragraph ~~8~~7 of this Section:

a. A 10 percent or more increase or decrease in the number of square feet or units that may be developed.

b. A 10 percent or more increase or reduction in the allowable height of buildings.

c. An increase or reduction in the allowable number of stories of buildings.

- d. A 10 percent or more increase or decrease in setback or open space requirements.
- e. An increase or reduction in permitted uses.

87. In proceedings governed by this Section, the City shall provide notice to real property owners pursuant to at least one of the following notification procedures 15 days before the hearing in the following manner:

- a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment from the County Assessor's records, whose real property is directly governed by the changes.
- b. The City shall include notice of such changes with utility bills or other mailings.
- c. The City shall publish such changes prior to the first hearing on such changes in a newspaper or general circulation in the City. The changes shall be published in a display ad covering not less than 1/8 of full page.

98. If notice is provided pursuant to Subsections b or c of Paragraph 7, the City shall also send notice by first-class mail to persons who register their names and addresses with the City as being interested in receiving such notice.

10 If the matter to be considered applies to territory in a high noise or accident potential zone as defined in A.R.S 28-8461, the notice pursuant to Paragraph 7 on this Section, shall include a general statement that the matter applies to property located in the high noise or accident potential zone.

119. Notwithstanding the notice requirements set forth in Subsection A of this Section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the City for which the notice was given.
(Ord. 743, passed 4-10-86; Am. Ord. 804, passed 3-24-88; Am. Ord. 834, passed 3-9-89; Am. Ord. 2003-008, passed 4-24-03; Am. Ord. 2004-014, passed 12-9-04)

Section 151.31.005

Commission Hearings and recommendation ~~Public Hearing of Applications~~

Every application for amendment of this Code shall be considered by the Commission ~~and Council~~ at a public hearing.

A. Burden of Proof. The burden of proof is upon the proponent. The more drastic the change or the greater the impact of the proposal, the greater is the burden upon the proponent. The proposal must be supported by proof that it conforms to the applicable elements of the General Plan and to applicable provisions of this Code, especially the specific criteria set forth for the particular type of decision under consideration.

B. Order of Proceedings

1. The presiding officer will state the case and call the public hearing to order. The presiding officer may establish the time allowed for the presentation of information.
2. Any objections or jurisdictional grounds shall be noted in the record.
3. Any abstentions or disqualification shall be determined. Members shall announce all conflicts of interest.
4. Presentation of staff report. City staff may also present additional information, whenever allowed by the presiding officer, during the proceedings.
5. The Commission and Council may view the area in dispute for purposes of evaluating the proposal, but shall state the place, time, manner, and circumstances of such viewing in the record.
6. Presentation of information by the applicant or those representing the applicant.
7. Presentation of evidence or inquiries by those persons who support the proposal.
8. Presentation of evidence or inquiries by those persons who oppose the proposal.
9. Presentation of evidence or inquiries by those persons who do not necessarily support or oppose the proposal.
10. Rebuttal testimony may be presented by persons who have testified supporting or opposing the proposed change. The scope of material presented during rebuttal shall be limited to matters that were brought up during the course of the hearing. Rebuttal shall be first presented by the applicant or his representative and then by those opposed to the proposed change. The presiding officer shall limit rebuttal to avoid repetition and redundancy.
11. At the close of presentation of information, rebuttal, and written argument, the presiding officer shall declare that the hearing is closed unless there is a motion to continue

the public hearing. Additional written argument may be permitted at the discretion of the Commission and Council.

12. Once a hearing has been closed, it shall be reopened only upon a majority vote of the Commission and Council and only after a reasonable showing that:

a. There is evidence which was not reasonably available at the time of the hearing; and

b. The evidence is now available to the person seeking to reopen the hearing; and

c. The evidence is factual, substantial, and material. If the hearing is closed, no further evidence shall be received except in response to specific questions directed to staff or one of the parties to clarify earlier evidence. The opportunity for brief rebuttal shall also be afforded to adverse parties.

C. Rules of Procedure

1. Formal rules of evidence shall not apply.

2. Written exhibits, visual aids, affidavits, maps, and the like may be submitted as part of the evidence. Any correspondence presented to or received by any member of the Commission and/or Council, or by any other City agency or official outside the public hearing, may be received as argument and placed in the record, but will not be considered as part of the information, except that correspondence received prior to the closing of the public hearing shall be included as part of the information in that hearing. Unless the Commission or Council specifically allows later filing of argument, no correspondence received after the close of the hearing will be considered as argument.

3. All information received by the Commission and Council shall be retained and preserved and shall be sent to an appellate body in the event an appeal is filed in accordance with Section 151.31.006. True, certified, or recorded copies of original information may be substituted for original documents.

4. All evidence and argument shall be as brief as possible, consistent with full presentation.

5. Redundancy shall be avoided.

6. Each person presenting information or argument shall be permitted to complete his presentation without interruption, except by the presiding officer, to enforce this Code.

7. Discussion of personalities shall be avoided to the extent possible in making a complete presentation.

8. No person present shall engage in applause, cheers, or other vocal or outward expressions of approval or disapproval, agreement or disagreement. If any person persists in such conduct after warning by the presiding officer, such person may be expelled from the hearing.

9. The presiding officer has complete authority to enforce these provisions to assure that a fair hearing is held, including the authority to expel from the public hearing and to bar from further appearance at the public hearing any person who willfully violates any one or more of these provisions.

~~BD. Findings~~~~Considerations.~~ The Commission shall recommend approval, approval with conditions, or denial of the request based on compliance with the following findings.
~~Following the hearing, the Commission and Council shall consider and make a recommendation, taking into account:~~

1. Findings for Map Amendments:

a. The change is consistent with the General Plan goals and policies;

b. The change is consistent with the purpose of the Development Code to promote the growth of the City in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare;

c. The change is necessary to achieve the balance of land uses desired by the City and to provide sites for needed housing or employment-generating uses; and to increase the inventory of land within a given zoning district to meet market demand.

~~1. The testimony at the hearing;~~

~~2. A site inspection of the property in question;~~

~~3. The recommendations from interested official bodies;~~

~~4. That a map amendment request has addressed:~~

~~a. The need and justification for the change; and,~~

~~b. The consistency of the amendment with the goals and objectives of the General Plan; and~~

~~-c. Whether the proposed amendment benefits the general public welfare and does not constitute a granting of special privileges to an individual.~~

5. ~~That a text amendment:~~

2. Findings for Text Amendments:

- a. Demonstrates the need and justification for the change; and,
- b. Demonstrates the relationship of the proposed amendment to the City's General Plan with appropriate consideration as to whether the proposed change will further the purposes of this Code and other City ordinances and regulations; and
- c. Consistent with the purposes of the Development Code to promote the growth of the City in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and~~Benefits the~~ general public welfare_ and does not constitute a granting of special privileges to an individual owner.

C. After the hearing, the Commission shall render a decision in the form of a written recommendation to the Council and to the applicant. The recommendation shall include the reasons for the recommendation and be transmitted to the Council and the applicant by the Director of Community Development.

Section 151.31.006

Council Hearings and Decision

A. If the Commission has held a public hearing, the Council may adopt the recommendations of the Commission without holding a second public hearing if there is no objection, request for public hearing, or other protest.

B. If an objection, request for public hearing, or other protest is formally submitted, a public hearing shall be required before the Council. The public hearing shall be advertised and meet the public notice requirements as stated 151. 31.004. Requests for public hearing, objections, or protests, shall be submitted no more than seven days after the Commission has rendered their decision.

a. The Council shall act to approve, approve with conditions, or deny the request. Any decision must include a determination on whether the request is compliant with findings as stated in 151.31.005.(B) The Director of Community Development shall notify the applicant of the action.

C. The Council shall hold a public hearing should the Fort Huachuca Encroachment Board provide comments or analysis concerning the compatibility of the proposed Zoning District Map Amendment within the high noise or accident potential generated by the military airport or ancillary military facility operations, that may have an adverse impact on public health and safety. The Council shall consider and analyze the comments or analysis before making a final determination.

~~('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 834, passed 3-9-89; Am. Ord. 2004-014, passed 12-9-04)~~

~~Section 151.31.006~~

~~Appeal from Denial of Amendment~~

~~In the event that the request for amendment is denied by the Commission, the applicant may, within seven days from the date of the Commission hearing, file an appeal to the Council. Upon receipt of such an appeal, the Council shall arrange to hold a public hearing upon due notice and posting as heretofore specified.~~

~~('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86)~~

Section 151.31.007

Protests Against Amendments

If the owners of 20 percent or more, (1) either of the area of lots included in a proposed change or (2) of those immediately adjacent in the rear or any side extending 150 feet, or (3) of those directly opposite extending 150 feet from the street frontage of the opposite lots, file a written protest against a proposed amendment, it shall not become effective except by the favorable vote of 3/4 of all members of the Council. If any members of the Council are unable to vote on such a question because of a conflict of interest, then, the required number of votes for passage of the question shall be 3/4 of the remaining membership of the Council, provided that such required number of votes for passage shall, in no event, be less than a majority (4) of the full membership of the Council.

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

Section 151.31.008

Reconsideration of Denied Zoning District Map Amendments

In the event that an application for a Zoning District Map Amendment is denied by the Council or is withdrawn after the Commission hearing, the Commission shall not reconsider the application nor consider another application for the same map amendment of this Code as it applies to the same property described in the original application, or any part thereof, for a period of not less than one year from the date of such denial action.

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 2004-014, passed 12-9-04)

Section 151.31.009

Fees

A filing fee shall accompany each application for amendment to the map or text of this Code, and no part of such fee shall be refundable. Such fees shall be determined according to a schedule established by resolution of the Council and posted in the office of the City Clerk. In addition, the applicant must pay all required publishing costs associated with the appeal.

('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86)

~~Section 151.31.010~~

~~Zoning District Map Amendment Conditioned Upon Site Plan Approval~~

~~The City Council may approve a Zoning District Map Amendment conditional upon a schedule for development of the specific use or uses for which the change is requested. Applicants requesting change under this Section shall submit, for consideration by the Commission and Council, a statement of the use or uses for which the change is requested, a specific schedule for development detailing the commencement and completion dates of the development of the proposed use and a site plan, prepared in accordance with the provisions of this Code, detailing the development plan for the proposed use. The submitted items will be considered by the Commission and Council at public hearings in accordance with the provisions of this Article. Approval of the site plan by the Commission shall be conditional upon approval of the amendment by the Council. The Council may approve the amendment. If the Council chooses to approve the amendment, approval shall be conditional upon development of the use or uses shown on the approved site plan within the period of time stated in the schedule of development. If, at the expiration of this period, the property has not been improved for the use for which it was conditionally approved, it shall revert to its former classification without additional Council action.~~

~~('76 Code, Art. 12-1) (Ord. 743, passed 4-10-86; Am. Ord. 834, passed 3-9-89; Am. Ord. 2004-014, passed 12-9-04)~~



Sierra Vista City Council
Special Meeting Minutes
February 9, 2021

1. Mayor Mueller called the February 9, 2021 City Council Special Meeting to order at 1:36 p.m., Council Chambers, City Hall, 1011 N. Coronado Drive, Sierra Vista, AZ

Mayor Rick Mueller – present
Mayor Pro Tem Rachel Gray – present
Council Member William Benning – present
Council Member Gregory Johnson – present
Council Member Angelica Landry – present (1:51 p.m.)
Council Member Sarah Pacheco – absent
Council Member Carolyn Umphrey - present

Others Present:

Chuck Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Nathan Williams, City Attorney
Jill Adams, City Clerk

Item 1 Acceptance of the Agenda

Mayor Pro Tem Gray moved that the Agenda for the Special City Council Meeting of February 9, 2021 be approved as written. Council Member Umphrey seconded the motion. The motion passed by a unanimous vote of 5/0, Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Johnson, and Umphrey.

Item 2 Request to adjourn into Executive Session in accordance with Arizona Revised Statute §38-431.03(A) obtain legal advice from the attorney or attorneys of the public body concerning a possible court agreement with Cochise County; and Arizona Revised Statute §38-431.03(A.3) discussions or consultations for legal advice with the attorney or attorneys of the public body on current litigation in which the City of Sierra Vista is a party – Gila River Adjudication, Sanchez vs. CSV, Brown vs. CSV, Beck vs. CSV, Peters vs. CSV, and Ray vs. CSV.

Council Member Umphrey moved to adjourn into Executive Session in accordance with Arizona Revised Statute §38-431.03(A) and Arizona Revised Statute §38-431.03(A.3). Council Member Benning seconded the motion. The motion passed by a unanimous vote of 5/0, Mayor Mueller, Mayor Pro Tem Gray, Council Members Benning, Johnson, and Umphrey.

Adjournment

Mayor Mueller adjourned the February 9, 2021 meeting of the Sierra Vista City Council Executive Session and Special Meeting at 2:39 p.m.

Mayor Frederick W. Mueller

MINUTES PREPARED BY:

ATTEST:

Maria G. Marsh, Deputy Clerk

Jill Adams, City Clerk



Sierra Vista City Council
Meeting Minutes
[February 11, 2021](#)

Mayor Mueller called the February 11, 2021 City Council Regular Meeting to order at 5:00 p.m., City Hall Council Chambers, 1011 N. Coronado Drive, Sierra Vista, Arizona.

Roll Call:

Mayor Rick Mueller – present
Mayor Pro Tem Rachel Gray – present
Council Member William Benning – present
Council Member Gregory Johnson - present
Council Member Angelica Landry – present
Council Member Sarah Pacheco – present
Council Member Carolyn Umphrey - present

Others Present:

Chuck Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Adam Thrasher, Police Chief
Matt McLachlan, Community Development Director
Jeff Pregler, Planner
Jill Adams, City Clerk
Nathan J. Williams, City Attorney

Invocation – Darren Haws, Church of Jesus Christ of Latter-Day Saints, conducted the invocation.

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

[Item 1](#) Acceptance of the Agenda

Council Member Benning moved that the agenda for the Regular City Council Meeting of February 11, 2021 be approved. Council Member Umphrey seconded the motion. The motion unanimously carried, 7/0. Mayor Mueller, Mayor Pro Tem Gray and Council Members Benning, Landry, Johnson, Pacheco, and Umphrey voting in favor.

Awards and Presentations

Mayor Mueller stated that normally the City Council presents certificates of appreciation to commissioners who have completed their tour of service, and rather than having them present due to COVID, letters and certificates have been mailed out to them. He then thanked outgoing Planning and Zoning Commissioners: the late David P. Thompson, who will be missed, Sharon Lake, and Steven J. Miller. Park and Recreation Commission: Misty Briseno and Glenn Hohman.

City Manager's Report: Mr. Potucek announced that the next regularly scheduled City Council Work Session is scheduled for February 23, 2021 at 3:00 p.m. in Council Chambers, reminded everyone that the City's offices will be closed on Monday, February 15, 2021 in observance of Presidents' Day. Most notably, the City's refuse service will change; the Monday service will occur on Tuesday and Tuesday's service will occur on Wednesday with Thursday and Friday service not being affected; but there will be no special pickups on Wednesday. He reported that the Apron and Taxiway J Rehabilitation Project was released on February 10, 2021 with bids being due on March 16, 2021. The Request for Qualifications for non-profits to run the Better Bucks Program has been posted on the City's website, and responses will be accepted through March 2, 2021. The bids for the Community Development Block Grants Soldier Creek Park and James Landwehr Plaza Improvements will be accepted until Noon on February 19, 2021. The Street Maintenance Pavement Patching, Crack and Sand Seal will be advertised in the newspapers on February 12, 2021 with bids being due March 5, 2021. The Police Department Locker Room Remodel Contract was awarded to Grail Construction, which will be kicking-off soon.

Item 2 Consent Agenda:

[Item 2.1](#) Approval of the Regular City Council Meeting Minutes of January 14, 2021

[Item 2.2](#) Resolution 2021-008, Appointment of George N. Fisher, Jr. to the Planning and Zoning Commission

[Item 2.3](#) Resolution 2021-009, Appointment of Rachel Gray, Carolyn Umphrey and Sarah Pacheco to the Sierra Vista Metropolitan Planning Organization Board of Directors

Council Member Landry moved that the Consent Agenda consisting of the Regular City Council Meeting Minutes of January 14, 2021, Resolution 2021-008, appointment of George N. Fisher, Jr. to the Planning and Zoning Commission, and Resolution 2021-009, appointment of Rachel Gray, Carolyn Umphrey and Sarah Pacheco to the Sierra Vista Metropolitan Planning Organization Board of Directors, be approved. Council Member William Benning seconded the motion. The motion unanimously carried, 7/0. Mayor Mueller, Mayor Pro Tem Gray and Council Members Benning, Landry, Johnson, Pacheco, and Umphrey voting in favor.

Mayor Pro Tem Gray stated that Mr. Thompson who was on the Planning and Zoning Commission passed away, which is the reason for the appointment of Mr. Fisher, who applied and was recommended for approval. Mr. Thompson gave a great deal of his time to the City and to Planning and Zoning, and he will be missed.

Council Member Pacheco stated that she has enjoyed two years on the Sierra Vista Metropolitan Planning Organization Board of Directors. She added that it has been interesting in working with transportation, and thanked Council for the recommendation and confidence for her to continue to serve on the Board of Directors.

Public Hearings:

[Item 3](#) Resolution 2021-010, new license, limited liability-type of ownership for a Series 12 Liquor License for Martha Carrillo on behalf of 143 Street Tacos Carniceria LLC

Council Member Pacheco moved that Resolution 2021-010, a new license, limited liability-type of ownership for a Series 12 Liquor License for Martha Carrillo on behalf of 143 Street Tacos Carniceria LLC, be approved. Council Member Umphrey seconded the motion.

Ms. Adams stated that this is an application filed by Martha Carrillo on behalf of 143 Street Tacos for a Series 12, which is a restaurant liquor license. The posting of the public hearing that is required by Statute was placed on the building on January 15, 2021, over the required 20 days and no comments have been received pro or con. The Police Department has done a background check on Ms. Carrillo and has no objection to this application moving forward. If approved, it will be returned to the State Liquor Board for final action.

The motion unanimously carried, 7/0. Mayor Mueller, Mayor Pro Tem Gray and Council Members Benning, Landry, Johnson, Pacheco, and Umphrey voting in favor.

[Item 4](#) Ordinance 2021-001, Proposed Text Amendment to Sierra Vista Development Code, Section 151.22.006, Matrix of Use Permissions by Zoning District, Manufactured Home Residence (MHR) District, to permit up to 30 percent of the total lots in a manufactured home subdivision to have recreational vehicles

Mayor Pro Tem Gray moved that Ordinance 2021-001, proposed text amendment to Sierra Vista Development Code, Section 151.22.006, Matrix of Use Permissions by Zoning District, Manufactured Home Residence District, to permit up to 30 percent of the total lots in a manufactured home subdivision to have recreational vehicles, be approved. Council Member Umphrey seconded the motion.

Mr. McLachlan stated that the public hearing is on an amendment application brought forth by a resident of the Cloud Nine Ranch Estates Subdivision located south of Highway 90, east of Avenida Del Sol. The request involves a one sentence text change to the Manufactured Home Residence District or MHR, which would allow up to 30 percent of the lots within a manufactured home subdivision to have recreational vehicles for dwelling purposes.

The MHR boundaries cover both manufactured home subdivisions and manufactured home parks. The distinction in the definition is that one is a platted subdivision with lots that are individually owned for the placement of single-family dwelling units either site-built homes or manufactured homes that are on lots that are 4,500 square feet or greater much like a traditional neighborhood. A manufactured home park on the other hand is a property under single ownership that is used as a location for two or more manufactured homes that are or intended to be occupied as dwellings on lots which are not conveyable. Tenants lease the ground space and reside in a unit that they own or is provided by the property owner for rent like in apartment complexes or often common share amenities and maintenance, landscaping and perimeter buffering that is required for site plan approval. Manufactured home parks are on large relatively insulated and self-contained properties.

The request under consideration applies only to manufactured homes subdivisions. Three neighborhoods are affected by the proposal, Cloud Nine Ranch Estates, Sulger and the incorporated portions of Fry Townsite (Map was displayed). There are 352 parcels of land within the amendment area, and if approved, up to 106 of existing plat lots would be eligible for use by recreational vehicles.

The Code requires attention to how an amendment benefits the general welfare of the community with respect to public safety. Site-built homes are inspected and approved by the City for compliance with local building codes, manufactured homes are inspected and certified by HUD, while the City oversees the installation pursuant to an intergovernmental agreement with the State. Recreational vehicles are exempt from HUD's manufactured home construction

safety standards as they are intended for recreational use.

Mr. McLachlan stated that there is awareness that there is a segment of society who prefer to live in their recreational vehicles year-round out of necessity or preference. Traditionally, local zoning laws confine their use to campground and park settings, which is currently the case in every other jurisdiction that was researched across the State.

The Code also asks to consider whether the request furthers the purpose of the Development Code. The MHR District regulations are designed to stabilize and protect the residential character of the neighborhood; promote and encourage the family environment and prohibit all incompatible activities. The request is not compatible with this purpose and intent. Allowing recreational vehicles as a primary use in an existing developed neighborhood could fundamentally alter the character and quality of the areas that the City has spent many years and vast sums of public tax dollars trying to revitalize.

Mr. McLachlan stated that it is not what people have bought into. People have purchased lots and constructed site-built or manufactured homes, and they have an investment expectation that permanent dwellings will be required. It is also important to consider that the City's definition encompasses RVs of all shapes, sizes, ages and complexions from popup trailers and truck campers to Class A motor coaches.

The proposal would also allow any type of recreational vehicle to be used as a living unit, either by the owner or by a renter on a fulltime basis. No City permit or inspection would be required because a recreational vehicle is not regarded as a building. By law, recreational vehicles are limited to 400 square feet. Consequently, there are other factors to consider that may come with RVs as permanent dwelling units, i.e., the exterior storage and accumulation of personal belongings and makeshift porch additions and carports to expand their footprint, which is not good for property values and a perimeter stockade fence does not cure the concerns. This undermines the intent of fostering neighborhood family environment espoused by the Code.

The Department is also mindful of the fact that there is a class of landlord in town that could take advantage of this ordinance to provide a substandard level of rental housing. By law, amendments must be consistent with the City's adopted General Plan. The housing and neighborhood element calls upon the City to promote quality, affordable, rental, and owner-occupied housing, revitalize target areas, build strong neighborhoods, develop high quality housing development. Staff finds that the proposed amendments are contrary to achieving these goals. Moreover, staff finds that the request will hinder the City's stated goal of fostering infill and redevelopment in the Cloud Nine and West End Planning Areas. This claim is supported by the protest petition that Council received.

The Code lays out three basic questions that must be satisfied for a text amendment to be approved:

1. Has an applicant demonstrated the need and justification for the change?

Written statements were provided to Council as Attachment A and testimony offered during the meeting to consider.

2. Is the amendment consistent with the General Plan and does it further the purposes of the Development Code and other City Ordinances and regulations?
3. Will the amendment benefit the general welfare of the community?

If it constitutes the granting of a special privilege to an individual owner, the amendment should be denied. The City is obligated to exercise equal treatment under the Law. Spot zoning is an illegal form of rezoning. This request needs to be considered on an area-wide basis, considering all three neighborhoods.

Based on the findings and conclusions provided in the staff report, staff recommends that the applicant's request be denied.

Mr. McLachlan stated that a copy has been provided to Council of the meeting minutes of the Planning and Zoning Commission that resulted in a three to one denial vote as well as written protest petition that was filed and meets the threshold in the Code that triggers the supermajority approval requirement by Council. Six votes of approval are required for passage.

Ken Froiland stated that he has lived in Cloud Nine since 1980, noted that in 1994 he put in a doublewide manufactured home, which were called mobile homes at the time because they had axels and wheels. He added that he has watched Cloud Nine go from a well-kept park until Mr. Novasic passed away, which has been run down into a slum. He proceeded to describe the park and its dilapidated mobile homes. Lastly, he stated that he knows the applicant and is aware that she has been there for a long time and owns her property, which is kept neat. He suggested that she be grandfathered as well as another couple that rents a lot, which is also kept up.

Mike Myers stated that he also lives in the area and reported that there are two major culprits that is causing the problem. The adherence to the zoning and codes that are currently supported is something that is going to help clean up the area. One of the major ones is Moonglow Realty and the other is a culprit that supports dilapidated homes that are Cloud Nine. He added that he is unsure whether they have the money to clean up, but it is ongoing, and they need the support of the City to make them adhere to the Code.

Ryan Bushnell voiced his concerns about living in area with a daughter that is blind to be surrounded by RVs. He added that he moved into the Park in 1997 and followed the Code and that changing it would affect the property value. Lastly, he stated that he is sorry for the people that this affects, but this impacts the community.

Amanda Root, applicant, stated that she owns a lot in Cloud Nine where she has lived for more than 20 years. She explained that until 2016, she lived in a double-wide mobile home, but a fire destroyed the mobile home. A good friend offered her a home to live in, rent free for one year and in the following months, the president of the Humane Society helped her look for an acceptable used mobile home, but found nothing that she could afford. At the end of her rent-free year, she was gifted an RV along with \$3,000 for the electric pole to be put on her property. She added that she has worked hard to beautify her property and shared pictures. She further added that she does not remember, or it did not register, when City the told her that she could not put a travel trailer on her property as there have been travel trailers in the park throughout the 20 years that she has been on her property. There was also a travel trailer three lots east of her lot, 20 years ago that was there for four years and at the time that she moved her travel trailer in 2017, there were three travel trailers. One had been there for 10 years, one for six years and the other for two years. Also, the management for Cloud Nine has from time to time rented out spaces for nightly RVers.

Ms. Root further stated that even though so much of Cloud Nine is run down, overgrown with weeds and abandoned trailers with boarded up windows, the City has not tried to make the

property owner clean anything up. Not one time in 20 years has she seen or heard of anyone being harassed or given a 30-day eviction notice to move their travel trailer off property in Cloud Nine, but in July 2020, she received a letter from the City stating that she had to move in 30 days. This fight with the City was started by a person in the park that did not want to pay for his own electric pole and was mad at the lady who would not let him use her pole, who happened to have a travel trailer on her lot adjacent to her home.

Lastly, Ms. Root stated that although the City staff has offered to help her get a manufactured home, the manufactured home that was offered needed too much work and she loves her home that is clean, safe and she owes no money on trailer or land. She cannot afford to move, and the financial burden would cause her to be homeless.

Georgia Montgomery stated that she has lived in Cloud Nine for six years and she and her husband like it there because it is conveniently close to the hospital, her husband's doctor, and the lab as well as the grocery store. She noted that living in an RV is also convenient because it is easy to clean, and it is environmentally friendly because it takes little energy to run.

Paul Avelar, Managing Attorney of the Institute for Justices Arizona Office, who has been working with property owners in the Cloud Nine area to help protect their homes. He reminded everyone that in July, they City tried to kick people out of their homes and off their property, people who have been there for years. When asked, the City stated that there was nothing that could be done, the law was the law. There were no variances that could allow them to stay and that they had to comply with the City's order to get out. There was no hearing, no appeal, and no court approval. He further stated that there is no public health or safety reason for kicking his clients out of their homes. Neither his clients nor their homes ever been a threat to public health and safety and the City has never claimed otherwise. He added that the Council's packet states that most property owners in Cloud Nine object, and that is just one entity, it is Moonglow, which by itself owns almost all Cloud Nine.

Mr. Avelar noted that Moonglow's properties tend to be run down, overgrown with abandoned trailers that have boarded up windows and yet the City has not gone after these real threats to Cloud Nine, just the people in trailers that the City calls RVs that take care of their homes, properties, and neighbors. It is not illegal to live in RVs in Sierra Vista and in Cloud Nine, the City's law states that his clients live in the wrong part of Cloud Nine and if they lived just to the west in the larger area that is one lot owned by Moonglow, it would be perfectly legal. They can rent space from Moonglow to live in their RVs, but they cannot rent from someone else or own their own property. He added that there was not a need for any of this as this came out of a neighbor's fight that had nothing to do with his clients. The City picked this fight by telling his clients that they had 30 days to pickup and get out in the middle of a pandemic.

Mr. Avelar stated that at the request of the Planning and Zoning Commission, he submitted proposed language to amend the law to fix this problem and it would of have treated Manufactured Home Residential Subdivisions the same as Manufactured Home Residential Parks, but the City's staff was opposed. At the request of the Planning and Zoning Commission, he submitted different proposed language to amend the law and allow some kinds of trailers, not all kinds of RVs as a Conditional Use in Manufactured Home Residential Subdivisions, but the City's staff was again opposed. During the Planning and Zoning Commission's November 17, 2020 Meeting, Mr. McLachlan testified that the City would restart enforcement efforts against his clients, would again attempt to evict them if the City Council did not amend the Code to allow them to continue living in their current homes. Given this threat, if the City Council does not amend the Code to allow his clients to stay in their homes, he plans to file a lawsuit because

it appears to be the only way to protect their rights in court. Their rights do not depend on whether they live in a castle or an RV. They are protected by the Constitution.

Donna Graybill stated that she has lived in Sierra Vista since 1976 on and off. She added that she was a real estate broker in the area for a long time, Director of Castle and Cooke's Pueblo Del Sol RV Park, a certified RV park manager/operator, and has RVed for 40 plus year. She further added that she sees this as a wonderful idea to change the Code and get Cloud Nine into today's realm. This happens in every other area that she has been in and mobile home parks go with RVing and most of the places that she has stayed in, there are RV resorts, RV parks and manufactured homes with RV parking in them. Many people have a misconception of what RVs bring to an area and what RVers are.

Council Member Benning asked about the classification of tiny homes. Mr. McLachlan stated that there are tiny homes on wheels and site built tiny homes and they are 400 square feet or less and the classification depends on the type of construction. If it is site built under a building permit it would be a permanent structure.

Council Member Pacheco stated that brought up was a two-year timeline where the Department first made contact, but Ms. Root stated that she was given a 30-day notice in July. Mr. McLachlan stated that he is not aware of a two-year timeframe, but there was a notice of violation sent, a precursor to formal Code enforcement action that stated the nature of the violation and gave a timeframe to correct that violation and encouragement to contact the Department. Generally, when there is communication between Code Enforcement and the property owner, the Department can work out a reasonable plan of action. Absent compliance, then the City affords the property owner due process through the abatement petition process, which is a hearing before the local magistrate where both sides present their case and a decision is rendered, and a timeline given for compliance if the violation is upheld. The property owner received last summer was a notice of violation to inform her of the zoning violation.

Council Member Pacheco stated that based on a lot of the public comments received in Council's packet, discussion held on Tuesday, February 9, 2021, she thinks that the troublesome thing that is being discussed is a mobile home park owned by one owner and this is not a mobile home park. This is a subdivision of homes and a Code change applies to all three home subdivisions that are displayed on the map. This does not just apply to this one neighborhood. It would apply to several different areas of the City that are also zoned the same and this is something that people need to understand. Foreverymore, anywhere in the three areas stated that are in the City, people could live in any type of RV. She added that this does not mean that the City should not be holding feet to the fire on dilapidated homes and properties that are in disrepair; however, this is a discussion for a different day because it is not relevant to the current discussion.

Mayor Mueller stated that had this happened 10/15 years ago, there would probably not be just three neighborhoods. There would have been several more because the City has slowly cleaned up and as the properties are being cleaned up, the City has taken into consideration the individuals and the impact on their lives. Therefore, it seems to take longer than it should.

Council Member Pacheco stated that the City is taking CDBG funding and trying to invest in these areas by putting in new streets, lighting, etc. like it was done in Sulger, where a whole new sewer line was installed with the thought that there would not be RVs. The City is trying to clean up these neighborhoods and investing in them. A Code change would be a step backwards.

Council Member Benning asked how long the property has been zoned Manufactured Home Residential District. Mr. McLachlan stated that the property has been zoned Manufactured Home Residential since the property was annexed in 1986.

Council Member Benning stated that it is a tough spot that the Council finds itself in, but it is not. He stated that Ms. Root's house is beautiful and added that the problem is, whether people are low-mid or high-level home buyer, it is still the American dream to buy a home, that when purchasing property, no matter what division the person is in or fracture of life, that person is spending their hard-earned money and does not want something to move in next door or down the street that is going to lower or diminish the value that put into their home. This is the reason why there are zoning laws and certain criteria of homes. It is not to select who can live there; it is to maintain a certain value that people invest in when they purchase their home. Then the problem comes in where the property has been zoned like this since 1986 and it is hard to grandfather somebody in because they knew what the regulations and Code were when they purchased their home. Lastly, he stated that he agrees with Council Member Pacheco in that the neighborhood needs to be cleaned up, but he will vote his conscious to uphold the current zoning and regulations.

The motion failed with all Council Members present voting no.

Mayor Mueller stated that it was decided administratively to suspend any eviction notice until such time as the Governor lifts his COVID Emergency Orders, which will provide for additional time. He noted that he is specifically stating this so that the attorney knows that information in public. In closing, he stated that the City is still open for a resolution and thanked the homeowner for being present, who did a brave thing in coming in to change the Code and working with staff to do that. He added that he admires that because it is a tough thing to do.

[Item 5](#) Ordinance 2021-002, Amendments to Chapters 130 and 151 of the City Code of Ordinances, Amending Sections 151.02.004, Definitions, 151.06.005, Medical Marijuana Dispensary, and 151.22.006, Matrix of Use Permissions by Zoning Districts, and Adding Section 130.05, Marijuana Prohibited on Public Property

Mayor Pro Tem Gray moved that Ordinance 2021-002, amendments to Chapters 130 and 151 of the City Code of Ordinances, amending Sections 151.02.004, Definitions, 151.06.005, Medical Marijuana Dispensary, and 151.22.006, Matrix of Use Permissions by Zoning Districts, and adding Section 130.05, Marijuana Prohibited on Public Property, be approved. Council Member Umphrey seconded the motion.

Mr. Pregler stated that this is a request for proposed text amendments relating to recreational marijuana standards. Prop 207 was approved by the voters on November 3, 2020 that legalized marijuana and allowed individuals 21 years of age or older to possess, purchase, consume, process, manufacture and, or transport one ounce or less of marijuana. It also allows individuals in their homes to harvest up to six plants or 12 plants if there are two adults, being over 21 years of age, provided that the plants are in an enclosed building under lock and key.

The State Legislation also allowed for marijuana establishments, which is the commercial component of the Legislation. Marijuana establishments are defined as a retail location where marijuana can be sold, cultivated, and manufactured. It is an offsite cultivation location where marijuana is processed and manufactured or it is an offsite storage location where marijuana is manufactured, packaged, and stored.

Mr. Pregler stated that more likely than not, it will probably be number one the type of establishment that will be received in this community where it will be all in one type of business – selling, retail location as well as the cultivation and manufacturing establishment.

The Arizona Department of Health Services will start accepting early applications between January 19, 2021 through March 9, 2021. Per State Law, counties that have less than two medical marijuana dispensaries, a total of two adult use marijuana establishments will be allowed. If there is already an existing medical marijuana establishment then one additional standalone recreational facility will be allowed within the county. There is currently one medical marijuana dispensary in the County located in Bisbee; therefore, there is one additional standalone adult use marijuana establishment that will be allowed within this county under this early application process. The Arizona Department of Health Services will be issuing six additional licenses sometime down the road.

The Legislation allows local jurisdictions to have limited discretion on regulating these marijuana establishments. The caveat being that the local standards cannot be more restrictive than the medical marijuana dispensaries standards. State Law allows local jurisdictions with three regulatory approaches to the recreational marijuana establishments. One, cities can prohibit recreational marijuana establishment outright within the community, they can allow these recreational establishments through a dual medical marijuana license, or these establishments can be allowed as standalone businesses.

Council held a work session on January 12, 2021 and the consensus was that they would like to see establishments, both as dual licenses and standalone establishments, and to keep the existing operational and development standards for medical marijuana in place, apply them to the recreational marijuana establishments, and to prohibit the use of marijuana on City owned properties. With that direction in mind, staff created the following text amendments:

- Section 151.02.004, Definitions

A few definitions were added to the Development Code copied directly from the Legislation; therefore, they are consistent with State Law.

Mr. Pregler stated that there was a question about the definition of a public community center and noted that currently there is a minimum distance requirement between medical marijuana establishments and certain uses. A public community center is one of those such uses, but there was no definition at the time for a public community center and for clarity purposes, staff has provided a definition for this term, “that a building owned by the City that is open to the public and is used for meetings, recreation or social activities, and may have outdoor recreation facilities shall be defined as a public community center.”

- Section 151.06.005, Marijuana Facilities

This definition of marijuana facilities will include four different types of facilities: medical marijuana dispensaries, medical marijuana cultivation and infusion facilities, which are currently in the Development Code and already have standards in place, marijuana establishments, and marijuana testing facilities.

Testing facilities are operated by the Arizona Department of Health Services or a licensed entity that analyzes the potency of marijuana and are not open to the public.

Submittal requirements will be required by anyone that wants to open any of these establishments/facilities in the City. The first requirement is a pre-submittal meeting/requirement and the reason for this is because there are specific fire/building code standards that address marijuana facilities. Before people spend a lot of money and invest in property, staff wants to let them know up front what some of the concerns are as well as the Code requirements that will need to be met. The other change in this section is that the Department has consolidated the existing submittal requirements.

- Section 151.06.005.(D), Development and Locational Standards

These will apply to all the facilities. The minimum distance standards were clarified. The existing language for medical marijuana facilities states that these facilities will not be located within 500 feet of a residentially zoned property, pre-schools, kindergartens, secondary schools, high schools, place of worship, public park, or public community center.

The Development Code already has a definition for schools/private schools and to clarify that, staff included those definitions into this section. A school refers to any public school or any charter school, K through 12. A school of general education refers to any private school that teaches the standard K through 12 curriculums. A childcare center licensed by the Arizona Department of Health Services would cover both childcare and pre-schools. The other change in this section is the consolidation of the existing development and locational standards.

- Operational Requirements for Marijuana Establishments/Medical Marijuana Establishments

The text amendments combine existing medical marijuana dispensary operational requirements with the requirements in the model ordinance by the League of Arizona Cities. Operational requirements were also added for marijuana testing facilities. Medical marijuana infusion or cultivation facilities will remain the same.

- Section 151.22.006, Matrix of Use Permissions

The marijuana establishments and the marijuana testing facilities have been included as permitted uses in the General Commercial Zoning District. They are limited to only the General Commercial Zoning District.

Medical marijuana dispensaries will be continued to be allowed in the General Commercial Zoning District and medical marijuana cultivation and infusion facilities will also continue to be allowed in the Industrial Zoning Districts.

- City Code Chapter 130.05, General Offenses

This section had definitions added that are directly copied from the Legislation that is consistent with State Law that currently prohibits marijuana smoking in open spaces and public places. Open spaces according to the Arizona Revised Statutes is sidewalks, multi-use paths, and parks. Public places would be any facility in which the public is invited, i.e., restaurant, office building, store. The State Law prohibits people from smoking marijuana in these locations. However, the Legislation also allows local jurisdictions to have prohibitions on the smoking on City owned properties.

From the direction of City Council, the provision has been added that prohibited is the smoking of marijuana, displaying, consuming, selling, distributing, storing, cultivating, manufacturing, or producing on City-owned properties.

The term displaying was discussed during the work session on Tuesday, February 9, 2021. This was something that the Police Department requested.

The Planning and Zoning Commission heard the proposed text amendments on January 25, 2021 and recommended a couple of revisions. The first amendment was that the minimum distance requirement between dispensaries be reduced from 500 feet, which is currently required for medical marijuana establishments to 300 feet. The 300 feet would be applicable to both the medical marijuana dispensaries and the recreational establishments. The other amendment recommended was that the minimum distance requirements to a school, school of general education, childcare center licensed by ADHS, place of worship outside of the General Commercial Zoning Districts, a public park or public community center be reduced from the current 500-foot requirement for medical marijuana establishment to 300 feet. This would be applicable to medical marijuana establishments and recreational marijuana establishments. The reason why they made this change was because it would provide additional locations to locate these establishments and it would be consistent with the liquor license distance requirements, which is also a 300-foot separation between liquor license establishments to residential districts, churches, etc.

Based on the work session on Tuesday, February 9, 2021, staff was given direction by consensus from Council to accept the Planning and Zoning Commission's recommendations. As a result of that, Exhibit A was modified and was sent to Council for their review. Council will voting on the revised Exhibit A that has the Planning and Zoning Commission's recommendations:

- 300-foot separation between dispensary establishments
- Maintain a 500-foot minimum distance separation between the dispensary establishments and residential zoning districts.
- Reduce the minimum distance separation between schools, schools of general education, childcare facilities, places of worship outside of General Commercial Zoning Districts, and public parks or public community centers to 300 feet from the current 500 feet.

A map was displayed that was recommended at the work session on February 9, 2021 that depicted the buffer map. This indicates a 500-foot buffer from the establishments to residential, includes a 300-foot buffer from the churches outside of General Commercial, schools and parks to the dispensaries and establishments. These buffers result in additional locations.

Council Member Umphrey asked if the map includes the community center as defined. Mr. Pregler stated that the map reflects all the uses listed on the minimum distance requirement.

Mr. Pregler indicated that several public comments were received, many of which discuss specifically the legalization and the allowance of these dispensaries and establishments. They did not talk about the language. Other comments were received from the real estate community indicating that the 2,000 square foot building maximum limits investment opportunities and that they may want to potentially see these establishments be in Industrial Zoning Districts as well.

Council Member Benning asked if discussion would take place later to allow these establishments in an Industrial Zoning District. Mr. Pregler stated that he is correct.

Council Member Pacheco asked if the City has an Industrial Zoning District. Mayor Mueller and Council Member Benning stated that the City does have an Industrial Zoning District.

Council Member Umphrey stated that the Herald Review released an article that helped her with some of her concerns about how the State would be choosing among the applications, which is a lottery. The City is doing as much as possible, and she does not feel that the City is delaying anyone. In closing, she voiced her appreciation at Council Member Johnson's helpful information because there may be related activity once there is an establishment in the City, but she would rather the City had the potential revenue, over \$100,000 per year.

Council Member Jonson stated that the issue before the Council whether to permit a recreational marijuana dispensary within the City limits. He added that he spent a great deal of time researching and studying the literature regarding the experiences of cities, both in California and Colorado who opened recreational marijuana dispensaries where states have legislative recreational marijuana to be legal. He further added that he wanted to decide based on facts and that would be a benefit to the City. Pro-marijuana sites play down the criminal, societal and physical consequences caused by the distribution of the product, but he reviewed many sources to balance out his research, and found numerous studies which were concerning, a rise in property crime rates within the proximity of a recreational dispensary. A study by the University of Colorado and the Ohio State University found that neighborhoods with one or more medical or recreational dispensaries saw an increase in crime rates that were between 26 and 1,452 percent higher than in neighborhoods without such commercial activity. Lastly, he stated that during the work session he mentioned the most recent academic study by the John J. School of Law in New York that analyzed the criminal effect of legalizing marijuana, recreational marijuana dispensaries in Denver. It was discovered that street segments or blocks with recreational marijuana dispensaries experienced an 18 percent increase in property crime and there were notable drug and disorder crime increases. A cost benefit analysis with the associated crime cost were largely offset by sales revenue, but barely cost effective based only on tax revenue. Based on his research and face to face contacts, he has no other choice than to vote no on the ordinance.

Council Member Benning thanked Council for the consensus in changing the 500-foot barrier to 300-foot. He noted that Council Member Johnson brought up good points during the work session and like Council Member Johnson, he voted no on Prop 207 because he believes that this opens more issues, but the people spoke. The problem that he currently has, is that he represents the people, and he wants to make sure that this is done the right way and best way for Sierra Vista and surrounding areas. This is going to happen no matter what the Council does as a body; therefore, he wants to make sure that it is done the right way. Crime is going to up regardless because now there will be people growing three plants in their basement, and they are going to give it away, sell it, and how the City monitors this is still in question. There are harsh regulations for alcohol, cigarettes, and he believes that there will be harsh regulations for marijuana. Opening it up and allowing a revenue stream from something that is going to happen anyway, selecting where in the City it can and cannot go is a huge thing to do to set the standard. In closing, he stated that he will be voting for the ordinance to give the free market and enterprise a chance.

Council Member Pacheco stated that she does not believe that the City nor the State is done. This is the start of a road that is going to be long, and Council is setting a place where it will be and at some point, there will be federal action and then the City will have to react to that. The City is reacting to things where they currently are, which is where the voters decided by voting yes on Prop 207. There will be a lot of enforcement hurdles, and she appreciates candid conversations with Police Chief Thrasher on his concerns.

Council Member Landry stated that five years ago, she would have probably said no, but it did pass and that is what the people wanted to do. Everyone has made great comments and she appreciates all the research that went into this and the discussion amongst Council Members. The good thing is that the City of Sierra Vista is not the first area that is doing this and there is a lot to learn from other areas that have done this before, and it is going to be a difficult process along with enforcement issues.

Council Member Benning stated that he would like to have a work session regarding the pros and cons of opening it up to the industrial zone.

Mayor Pro Tem Gray stated thanked Mr. McLachlan and Mr. Pregler for their work in looking at codes, research and writing this in a way that is beneficial to the City that captures the consensus of Council was not easy in the short period of time. She added that she will be voting in favor and it is not an approval of marijuana, this has to do with the long-term planning of the City. She appreciates the consideration of disbursing the facilities out so that the City does not end up with a district of dispensaries.

Mayor Mueller stated that when folks voted on this for approval, the City did in fact enter on a long journey on a road and part of the Council's job is to make sure that it is the least hazardous as it can be made within the bounds of the law. This will continue to be a challenge to be able to still protect and serve the citizens and to make sure that the community is not harmed.

In response to Council Member Benning, Mayor Mueller stated that there is no emergency clause on this ordinance.

The motion carried, 5/2. Mayor Pro Tem Gray and Council Members Benning, Landry, Pacheco, and Umphrey voted in favor. Mayor Mueller and Council Member Johnson casted the dissenting votes.

New Business

[Item 6](#) Resolution 2021-011, Intergovernmental Agreement between the City of Sierra Vista, and the Arizona Department of Transportation for Exchange of Crash Data

Council Member Umphrey moved that Resolution 2021-011, Intergovernmental Agreement between the City of Sierra Vista, and the Arizona Department of Transportation to continue to electronically provide and access traffic crash data for inclusion in the statistical analysis and publication, be approved. Council Member Benning seconded the motion.

Police Chief Thrasher stated that this is an intergovernmental agreement between the City and the Arizona Department of Transportation. Law enforcement agencies throughout the State provide the Arizona Department of Transportation with traffic data from each of their respective jurisdictions. The Arizona Department of Transportation uses the data to publish a statewide publication with statistical analysis of traffic crashes. The Sierra Vista Police Department has provided this data to the Arizona Department of Transportation for several years and the intergovernmental agreement is a renewal of the previous agreement to provide electronically the traffic crash data for inclusion in the analysis, and so that the Department can access that data online.

This is also the first step to implementation of electronic crash forms and traffic citations that would go directly from the patrol vehicles into the Arizona Department of Transportation's system.

Mayor Mueller noted that the City has been in this agreement before, and it is a routine item.

The motion unanimously carried, 7/0. Mayor Mueller, Mayor Pro Tem Gray and Council Members Benning, Landry, Johnson, Pacheco, and Umphrey voting in favor.

[Item 7](#) Resolution 2021-012, Arizona Department of Homeland Security-Operation Stonegarden Grant

Council Member Johnson moved that Resolution 2021-012, Arizona Department of Homeland Security-Operation Stonegarden Grant, be approved. Council Member seconded the motion.

Police Chief Thrasher stated that is the acceptance of a Homeland Security Grant with the Arizona Department of Homeland Security for operation Stonegarden. The Operation Stonegarden Program supports enhanced cooperation, coordination amongst Customs and Border Protection United States Border Patrol, and federal state local tribal and territorial law enforcement agencies. The program provides funding for joint efforts to secure the United States borders along routes of ingress from international borders to include travel corridors in states bordering Mexico and Canada, as well as states and territories with international water border.

Stonegarden remains focused and committed to supporting State, local and Tribal law enforcement agencies in their goals to build, capability to prevent, protect against, and respond to all threats dealing with border security issues by encouraging local operational objectives which serve as a “force multiplier” to enhance National and State Border Security Strategies. State and local agencies that participate in Program enforce state law and coordinate enforcement efforts with federal partners to provide overlapping layers of public safety for the communities. The deployments enhance Sierra Vista Police Department’s proactive enforcement of state drug trafficking and traffic statutes in Sierra Vista and the immediate surrounding areas.

The award notification and agreement will authorize the City to receive grant funding in the amount of \$81,059 for overtime and employee related expenses and \$12,061 for mileage from the Arizona Department of Homeland Security. The employee related expenses include all PSPRS liability as well the entire employee related expenses that the City has regarding each person working overtimes.

The motion unanimously carried, 7/0. Mayor Mueller, Mayor Pro Tem Gray and Council Members Benning, Landry, Johnson, Pacheco, and Umphrey voting in favor.

Call to the Public:

Lawrence Harju spoke about his non-profit organization/church in Uganda led by Dr. Kyagulayi and being able to setup at the Farmer’s Market to request donations for water systems.

Todd Ryen spoke shared ideas for Veterans’ Memorial Park and the West End.

Comments and Requests of the Council

Council Member Johnson stated that Mitsy Kirmse passed away on Sunday, February 7, 2021. Ms. Kirmse was very instrumental in supporting the Forgach House for 24 years by putting on wonderful variety shows and a good friend to many.

Council Member Benning stated that Judge Kirmse and his family are in his prayers, announced that the Park and Recreation Commission meets on the second Tuesday at 5:30 p.m. and encouraged people to join them and share their ideas. He added that there is also a Cultural Diversity Commission that is recruiting memberships. The Park and Recreation Commission is looking at having a Chris Kringle Mart. In closing, he wished everyone to be safe and enjoy their loved ones during the four-day weekend. He wished Tanya a Happy Birthday and a Happy Valentine's Day.

Council Member Landry announced that there will be Valentine's Day Treats on Friday, February 12, 2021 at 11:30 a.m. at the Salvation Army's Parking lot, courtesy of the Fore Runners Outreach Ministry. She also announced that the Sierra Vista Animal Shelter has suspended dog intake due to precautions for parvo, but adoptions are still going on. She encouraged people to adopt a dog since they have been full at the Shelter, and they make a perfect Valentine's Day gift. She noted that dogs are a commitment and if people cannot do that, the shelter does take donations year-round for Purina dog/cat food, laundry soap, towels, blankets, poop bags, bleach, toys, and treats. People can also sponsor animals if they cannot take one home. Lastly, she double dog-dared everyone to donate all the things from the list before next month.

Council Member Pacheco had no comments.

Council Member Umphrey stated that she is excited and loves Todd Ryen's ideas about the Christmas Market and the fact that the Sierra Vista Unified School District during their emergency meeting, voted to return to in-person school on March 1, 2021. The decision came after a long and thoughtful discussion.

Mayor Pro Tem Gray stated that all kids and parents are probably happy to get away from each other and looking forward to in-person school. She thanked Mr. Fisher for joining the Planning and Zoning Commission and has a great deal of experience. She wished everyone a Happy Valentine's Day and shared that she has a dog that started out as a foster from the shelter, Dusty who completely changed their lives – she agrees, go adopt.

Mayor Mueller thanked staff for all their hard work as there were two difficult issues that had to be decided upon. He also voiced his appreciation to the public for coming up and sharing their thoughts because it is important for the Council to hear; although Council reads ahead of time all the emails sent to them. He also stated that there is a holiday scheduled on Monday, February 15, 2021 and although, people normally do not travel on President's Day, he asked everyone to be safe and make sure that they are ready to go on Tuesday.

Adjournment

Mayor Mueller adjourned the February 11, 2021 meeting of the Sierra Vista City Council at 6:55 p.m.

Mayor Frederick W. Mueller

MINUTES PREPARED BY:

ATTEST:

Maria G. Marsh, Deputy Clerk

Jill Adams, City Clerk

February 25, 2021

MEMORANDUM TO: Honorable Mayor and City Council

THRU: Charles P. Potucek, City Manager
Victoria Yarbrough, Assistant City Manager
Sharon G. Flissar, P.E., Director of Public Works
Jing Luo, Ph.D., P.E., City Engineer

FROM: Bryce Kirkpatrick, E.I.T., Civil Engineer

SUBJECT: Request for Agenda Item Placement - Resolution 2021-015,
Authorizing the City of Sierra to Submit a Grant Application
Through WaterSMART Grants: Small-Scale Water Efficiency
Projects with the Department of Interior, Bureau of Reclamation
(BOR)

Recommendation:

The Director of Public Works recommends approval.
The City Manager recommends approval.
The Assistant City Manager recommends approval.

Background:

The City of Sierra Vista recently purchased approximately twenty-one acres of the Rothery Center for the expansion of City's parks and sports fields. The property currently has multiple turf fields that are in disrepair due to antiquated and leaking irrigation systems. A new irrigation system for these fields is in the final stage of design. The irrigation system replacement project at Rothery Center will benefit the City in the following ways:

1. Provides a more reliable irrigation service to the Rothery Center, which in turn provides a beneficial public use.
2. Improves water efficiency by adopting new technologies.
3. Allows the Parks Maintenance staff to save time and resources which would otherwise be used to patch the existing irrigation system.

The Bureau of Reclamation's WaterSMART Grant for Small-Scale Water Efficiency Projects (SWEP) offers up to \$75,000 in grant funding to small water conservation projects with total costs of \$200,000 or less. Although the Rothery Center irrigation replacement as a whole is expected to exceed the grant amount, portions of the project can be broken out to meet the grant eligibility criteria.

The current action before Council authorizes staff to submit a grant application under the program. Funding is not guaranteed, and if the City's application is successful, an additional action will be needed to accept the terms and conditions of the grant.

RESOLUTION 2021-015

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY OF SIERRA VISTA TO SUBMIT AN APPLICATION WITH THE DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION (BOR), FOR A WATERSMART SMALL-SCALE WATER EFFICIENCY PROJECTS GRANT; 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, the Department of the Interior, Bureau of Reclamation, has been authorized to provide funding to water efficiency projects under the authority of Section 9504(a) of the Secure Water Act, Subtitle F of Title IX of the Omnibus Public Land Management Act of 2009, Public Law (P.L.) 111-11 (42 United States Code [U.S.C.] 10364), as amended with a funding opportunity number R21AS00300; and

WHEREAS, it is beneficial for the City of Sierra Vista to seek grant funding to assist with the costs of local improvement projects; and

WHEREAS, the WaterSMART Grant: Small-Scale Water Efficiency Projects offered through the Department of Interior, Bureau of Reclamation has been determined to have application criteria compatible with the Rothery Center Irrigation Improvement Project; and

WHEREAS, the City of Sierra Vista is legally authorized under federal, state, and local law to apply for and receive federal assistance.

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 of the City Council seeking funding assistance, be, and hereby is, reaffirmed and the City Council supports submitting an application to the Bureau of Reclamation for the WaterSMART Grant: Small-Scale Water Efficiency Projects.

SECTION 2

That the City Manager or his/her designee would have the authority to enter into an agreement with the Department of Interior, Bureau of Reclamation, for a WaterSMART Grant: Small-Scale Water Efficiency Project if a grant offer is made and after the grant offer is accepted by the City Council.

SECTION 3

That the City is committed to providing match funding and/or in-kind contributions required by the grant.

SECTION 4

That the City Manager or designee is authorized to work with BOR to meet established deadlines for entering into a grant or cooperative agreement.

SECTION 5

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 25TH DAY OF FEBRUARY 2021.

FREDERICK W. MUELLER, II
MAYOR

ATTEST:

APPROVED AS TO FORM:

JILL ADAMS
City Clerk

NATHAN WILLIAMS
CITY ATTORNEY