

Sierra Vista City Council  
Meeting Minutes  
July 8, 2021

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Mayor Mueller called the July 8, 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 Mark Rodriguez- present  
Council Member Carolyn Umphrey - present

Others Present:

Chuck Potucek, City Manager  
Victoria Yarbrough, Assistant City Manager  
Chris Hiser, Commander, Police Department  
Laura Wilson, Parks, Recreation and Library Director  
Sharon Flissar, Public Works Director  
Matt McLachlan, Community Development Director  
Tony Boone, Economic Development Manager  
Mike Cline, SEACOM Director  
Nathan J. Williams, City Attorney  
Jill Adams, City Clerk

Invocation - Pastor Greg Rowles, God is Good Church, 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 July 8, 2021, be approved. Mayor Pro Tem Gray seconded the motion. The motion unanimously carried, 7/0. Mayor Mueller, Mayor Pro Tem Gray and Council Members Benning, Landry, Johnson, Rodriguez, and Umphrey voting in favor.

City Manager's Report: Mr. Potucek announced that the City Council Work Session on July 20, 2021, and Council Meeting on July 22, 2021, have been cancelled because he and Ms. Yarbrough will be out of town and there does not appear to be any items for those meetings, but there is a special meeting scheduled for July 20, 2021 at 4:30 p.m. in Council Chambers that will entail the vote on the final budget. He reported that the North Garden Avenue/Fry Boulevard Improvements Phase I Project had its initial bids coming in high, so it was determined to go back out to bid, which turned out successfully as new bids came in within budget. KE&G will begin the project on July 19, 2021, with estimated completion before Christmas. Staff is in the process of informing all the businesspeople along Fry Boulevard and will continue to work with them throughout the construction. The Airport's sign that has been discussed was awarded to High Desert Sign, and the fabrication process takes about eight weeks; therefore, estimated

completion of the project is by the end of August. The Apron and Taxiway J Rehabilitation Project that was awarded to J. Banicki Construction Inc. is expected to begin most of the construction in late July or early August, after the fire season. The EMS Substation Design-Build is a project that is being watched closely because of the cost and grant associated with it. Staff is estimating those prices to come in on August 6, 2021, and construction is estimated to begin the later part of August with completion by the end of February. Lastly, he reported on the SEACOM JPA Board Meeting where it was agreed upon engaging in a strategic planning process much like the Council does, and setting goals for Mr. Cline to include staffing and recruitment policies, ideas which are always going to be an issue with hiring at SEACOM, an update of the intergovernmental agreement, bylaws, funding formula for subscribers and putting together a longer term financial plan that will find SEACOM operating on its own.

## New Business

### Item 2 Approval of the Regular City Council Meeting Minutes of June 24, 2021

Council Member Rodriguez moved that the Regular City Council Meeting Minutes of June 24, 2021, be approved. Council Member Benning seconded the motion. The motion unanimously carried, 7/0. Mayor Mueller, Mayor Pro Tem Gray and Council Members Benning, Landry, Johnson, Rodriguez, and Umphrey voting in favor.

### Item 3 Resolution 2021-049, Amendment to Intergovernmental Agreement with Cochise County for Court Co-location and Operations through June 30, 2022

Council Member Landry moved that Resolution 2021-049, amendment to the Intergovernmental Agreement with Cochise County for Court co-location and operations through June 30, 2022, be approved. Mayor Pro Tem Gray seconded the motion.

Mr. Potucek stated that this is the court co-location agreement to operate magistrate court services on the city's behalf with Cochise County that requires signatures of the Board of Supervisors, the Presiding Judge of Superior Court, Judge Dickerson and the Justice of the Peace Judge, Judge Curfman (in attendance).

Mr. Potucek stated that it is important, even though the cover memo goes through some of the background, to go over how the city got to this point. This started in June 1990 where the city had an agreement with Cochise County to provide magistrate court services. At the time that this was approved, the compensation was the fine revenue and there were no additional monies required. This went on until September 2006 when the city updated that agreement. At that time, the county asked that the city to help pay for the cost associated with prosecution and clerical support for the consolidated court. In Fiscal Year 2007, the city was asked to not only contribute the fine revenue, but the sum of \$65,000 which went to the sum of \$99,500 in Fiscal Year 2008. This went on for awhile and then there was another amendment in December 2016 because a formula was devised that identified the cost of defense, prosecution, staffing, operations, and interpreter costs in the amount of \$435,615 with offsetting revenue estimated that year at \$350,000. This resulted in a reduction of the fee that the city was paying the county for the services of the court down to about \$86,200 and continued until June 2019, when the county approached the city about extra payment regarding the judge pro tem, a figure of about \$100,000 and \$61,000 for the judge pro tem putting the city's cost at \$161,000 until the current agreement that is now before Council.

The current agreement before Council envisions a cost of \$276,000. The formula now envisions all court costs associated with the percentage of cases cited into the Justice of the Peace V, calculated at about 47 percent. The fine revenue would go towards that as well. Seen is an increase of cost from \$161,000 last year to the figure of \$276,000, \$125,000 increase over last year's budget, a significant increase. The city is now paying their full share of what the city's Justice of the Peace V court cost should be based on the formula. A lot of work went into that primarily on the city's side by Ms. Yarbrough, which is appreciated. Therefore, the city now has an idea of what is being paid for and what the costs are.

State Statute requires the city to have a magistrate court and that can be done in one of two ways. This may be done via an agreement through the Justice of the Peace V, or the city can stand up its own court as the city had prior to 1990. For comparisons sake, staff did an analysis of what those costs were thought to be.

Mr. Potucek stated that he will rely for comparisons sake on the Town of Oro Valley because they are similar in size to the City of Sierra Vista, budgets, etc. In their magistrate court budget, published online, they have a magistrate judge, court administrator, court room clerk, three senior court clerks, one and a half court clerks and a court security officer - bailiff. This is about eight and a half personnel and the personnel costs associated with the magistrate court are \$762,596. Their operations and maintenance is \$165,916 for a total cost of \$928,512, and they also envision fine revenue offsetting. He further stated that he finds this figure interesting because Oro Valley has 100 police officers to the city's 66 sworn officers for a same size community. They have ample opportunity to write tickets into their magistrate court and they are still ending up with fine revenue of \$282,400.

Oro Valley also has a legal department and Sierra Vista has a half time city attorney. Oro Valley's personnel of legal services is comprised of a legal director, chief civil deputy attorney, assistant town prosecutor, senior paralegal, paralegal I and legal secretary and probably contract for legal defender services.

Mr. Potucek stated that he cannot imagine Oro Valley city attorney's work being beyond what Mr. Williams provides for Sierra Vista. He further stated that he assumes that a lot of these costs are associated with their court operation. Their personnel costs total \$751,078, operations and maintenance totals \$151,676 for a total of \$902,754. This is already up to \$1,830,000 with \$282,000 of offsetting revenues, about \$1.5 million difference. This would not be all because the city would probably incur jail costs as well in running a court as Huachuca City does running their court.

The County charges \$381 for day one of a jail stay and \$361 for days two and beyond. City staff does not yet have a number in terms of how that would impact the city. However, staff did a very rough calculation in taking a third of the cases that the city cites into the court that end up with jail time and only applied the day one cost for a total of \$183,000 in jail costs. However, there are many cases that would have more than one day of incarceration associated with it and the actual jail cost number would be much higher than what has been estimated.

Mr. Potucek stated that the city would try to operate a court in a more efficient manner than Oro Valley is able to do, but there is a significant cost increase when compared to the agreement that is before Council with Cochise County. He added that this has been a difficult process to go through and there really has not been any negotiation. The city is in a situation where the city has a services agreement and a situation where it is either take this or stand up a court. While this is difficult to do, he likes to bring options to the Council or at least have the opportunity to do

that and work with people, but in this case, the city does not really have a choice and that is what makes this a very difficult thing to do. Lastly, he stated that he is strongly recommending that Council approve the agreement because of the extreme cost differential between the two options, and the fact that the city has successfully been able to have this agreement over the past 30 plus years.

Ms. Yarbrough stated that the changes in the agreement from the previous one that was approved last November are clarifying statutory references, procedural definitions, and Part D, Section III which would appoint the justice of the peace, Judge Curfman as the city magistrate. There is also the addition of Part E related to the city magistrate's compensation, and the removal of Parts B and C of Section V related to allotting time for exclusive use of the municipal court, special provision of staff and resources. The funding formula states that the payment to the county would be \$276,807 for the next fiscal year. This gets recalculated annually based on the number of cases from the previous year that is due by March 1 for consideration of the annual budget process.

Council Member Benning asked if the \$276,807 is approximately 47 percent of the cost that the city incurs at the county. Mr. Potucek explained that it is 47 percent of the total cost of operating the Justice of the Peace V that the county incurs based on the number of cases that the city cites into the Justice of the Peace V. Ms. Yarbrough noted that 46 percent is subtracted from the total revenue of that cost.

Council Member Benning asked about the number of code violations that the city has annually. Ms. Yarbrough stated that those related strictly to city ordinance cases, i.e., animal control or property maintenance are about eight to ten.

Mayor Pro Tem Gray asked about an estimated timeline for the city to set up its own court. Mr. Potucek stated that it would take a couple of years. The city would need to identify appropriate space either for rent or lease or decide to build its own court. The city would then need to find staffing, which is also difficult as currently staffing for the other positions in the city has been an issue. The city would need to identify its needs, acquire the state court software, and get people trained. Staff estimated about \$1.7 million in startup costs.

Mayor Pro Tem Gray stated that she reached out to other entities, i.e., Apache Junction the one that is closest in population and they, without jail cost, spend about \$3 million a year on their court.

Council Member Rodriguez stated that the \$1.5 million would come out of the General Fund, which means major cuts if the city were to do it this way that would affect a lot of the initiatives that the city is currently trying to do with its current budget. Mr. Potucek stated that this is a General Fund supported operation and increased cost, even the ones currently being experienced, without a tax increase or whatever to support this, obviously takes away from some other part of the operations. This would be a significant budget challenge.

Mayor Mueller stated that he would hope that if the city gets to this point where Council would actively consider a new court, that Council would consider what needs to be cut before addressing any additional revenue requirements for the public i.e., raising taxes. He further stated that this is the way the city has operated in the past.

Council Member Benning stated that he is for the intergovernmental agreement and being co-located with the County is a good idea because it saves the city money, and it helps the county to a point/reason. He added that he plans to vote in favor.

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

Item 4 Resolution 2021-050, Judicial Services Contract with Kenneth J. Curfman, Justice of the Peace, Precinct V

Council Member Umphrey moved that Resolution 2021-050, Judicial Services Contract with Kenneth J. Curfman, Justice of the Peace, Precinct V, be approved. Mayor Pro Tem Gray seconded the motion.

Ms. Yarbrough stated that the last item appointed Judge Curfman as the city magistrate; therefore, this is the attached contract which specifies the term of that arrangement. City Code Chapter 43.02 states that the magistrate of the city be appointed by the mayor and city council that shall hold an office for a term of two years to run concurrently with the term of the office of mayor and council. The terms of this contract would begin retroactively to January 1, 2021 and run through December 31, 2022. Judge Curfman will be paid \$52,500 a year for his services as city magistrate.

Council Member Johnson stated that this was discussed at great length during the work session on Tuesday, July 6, 2021, but he will vote against the proposition because the city will be paying \$276,807 or 46.16 percent, which is the city's fair share in supporting the actual operating costs based on the caseload of the Justice of the Peace V Court to include the share of the justice of the peace's salary. He further stated that the now seated justice of the peace was fully aware of the workload and salary that he would be receiving if successful in running for office; however, the seated justice of the peace wants to increase his already generous salary of \$105,000 by yet another 1/3 for a total of \$157,500 per year. In other words, he wants to increase his salary by \$52,500 solely on the backs of hard-working Sierra Vista taxpayers. Additionally, such an increase would pay him more for his services than a busy superior court judge would receive that is required to be a licensed attorney. If the city fails to pass this proposition, then the city is threatened with not having its cases handled, and the city would be forced to establish its own court system. In closing, he stated that his belief is that any case filed within the Justice of the Peace V jurisdiction should be heard and handled by the justice of the peace. This agreement is one-sided and against the city. Lastly, he stated that he is shocked as a city council person that the city is being held hostage to this agreement by an elected official and consolidated agreement that the city has no control over. He views this as an OK Corral showdown moment for the city; therefore, he will be voting no.

Council Member Benning stated that he could not have said it better than Council Member Johnson, added that he does not see paying 46 percent of the judge's salary, having to increase the salary that is based off the case load to begin with. He noted that a justice of the peace can only be paid 75 percent of what a superior court judge makes, and he does not see the city paying twice, almost three times worth for services; therefore, he cannot support this agreement.

Council Member Rodriguez stated that he mirrors the sentiments of Council Members Johnson and Benning, noted that he is all about paying someone what they are worth and work for. He shared that he is a contractor and knows that if there is job outside the regular scope of work,

then any compensation should be talked about. In this case, in looking at the figures that were provided/researched, there does not seem to be a workload change from the previous judges that were in Justice of the Peace V until now. He stated that he does not understand why the number would double, nor does he agree with it. As a council member he feels fiscally responsible to the citizens and noted that this comes from the General Fund. Council/city are trying to bring people's wages up to be competitive in the area and this goes against what the city is trying to do. There are people that work out there, public servants, police officers, fire fighters that come in on their day off, do extra stuff, take classes, and do not get extra money. They do not have the opportunity to ask for that either, and this is very unfair, especially someone who generates revenue for the city, and do not have that same option. Lastly, he stated that staffing is another issue because the city cannot staff some positions because better wages are needed for people to stay in the city. When it comes to voting in the next election, those people will see this and do more research on what they are voting for and who, and if they take a position, what that position entails, includes, and does not include. In closing, he stated that the city is being forced between the lesser of two evils, to take the better deal or have it cost the city more on the back end and nobody is for that. Nobody wants citizens to lose things because the city must cut things out of the budget. Council is left with only two choices, take it, or leave it; therefore, he will not support this.

Mayor Pro Tem Gray stated that this is not an easy decision, nor is this something that Council takes lightly; however, it is Council's job to be protective of the city's finances. She added that \$1.7 million and \$1.5 million, not including jail cost, or \$276,000 plus \$52,500, \$175,000 more is better for the taxpayers to look at in the short term, while the city possibly looks at other options or decides that this is the best deal. Currently, in the long term what is before Council is a choice of \$1.7 million or \$330,000 and she will be erring on the side of preserving the finances of the city; therefore, she will be voting in favor.

Mr. Potucek pointed out that although the figure being requested is higher than what the city has been used to, it is the first time that council is voting on the salary figure. The last figure prior to this under Justice of the Peace Dickerson was \$28,750. This is not unprecedented because the city used to do this in the budget. Lastly, he reminded council that all the signatures need to be affixed to the agreement that was approved.

Council Member Landry stated that this makes her feel sick to her stomach and hates that council is in this position. She noted that having a paper trail is very important to be able to track because before, there were some side deals and there was no written or formal documentation. Now the city has figures and formulas to track the numbers and see how things are and in what position the city is in as well. Every problem cannot be fixed, and everything cannot be planned, but a lot of things are coming to the light that shows a lot of greed and selfishness by somebody. She admonished Judge Curfman for putting the city in this position and voiced her love of the community, noted that everyone decided to serve the public and to look out for the citizens of Sierra Vista. The city can fix some of the long term issues or have short-term struggles that involve costs that the city may not realize, but there needs to be a lot more discussion and the lack of makes her frustrated. She added that some changes need to be made higher up and noted that currently the city cannot hire and fill positions now and pay people competitive salaries, especially after COVID. People in Sierra Vista have gone through a lot and have banded together to help one another. Council had its Strategic Plan, and they have great plans, but she does not see how putting the city in this position and taking away from people is helpful. In closing, she stated that she does not want to be put in this position again.

Council Member Umphrey voiced her dilemma in that on one hand the city has a contract that not everyone is completely comfortable with and on the other hand, the council has an obligation to provide judicial services. Currently the city is prepared and has budgeted to do this and continue this through the colocation agreement and the magistrate agreement. The best solution would be to, while not ideal, approve the contract with the understanding that the city pursue the strategies that were discussed during the work session to avoid being in this same situation in two years.

Mayor Mueller stated that this does not sit well with him, and he understands everyone's frustration, but the city needs to provide the services and is in a position where it must act. During the work session there were a couple of things mentioned that can be done over the next year because this agreement is for a two-year period, and it has already been six months. During the next year, the city needs to actively work with the county and the justice of the peace to make sure that some of the double pricing that appears to be in the document is addressed. It is unfair and the overall cost should be lowered, but the bottom line is the provision of judicial services to the community. Currently this agreement is the only vehicle that the city has to provide judicial services and it is about a year out before the city starts renegotiating. Council needs to look at the Arizona Revised Statutes, if there is a legislative fix for this, so that the city can make sure that it is not hemmed in by undue regulation, a longer-term issue if there is in fact something the city can do to change things legislatively.

The motion carried, 4/3. Mayor Mueller, Mayor Pro Tem Gray and Council Members Landry and Umphrey voting in favor. Council Members Benning, Johnson, and Rodriguez casting the dissenting votes.

#### Comments and Requests of the Council

Council Member Johnson had nothing to report.

Council Member Benning thanked his sister and niece for visiting him, council members, because even though they do not always agree, they know that they must do the right thing for the city, and it is hard. He added that he met some great firemen during the weekend and noted that one of the big pushes being done is increasing their pay because all the security services, fire, EMS, and police officers are about \$10,000 to \$15,000 below the going rate. He further added that he would like to see money pushed towards this than to other things. Lastly, he thanked everyone for the birthday wishes and for allowing him to be on the dais representing them.

Council Member Rodriguez had nothing to report.

Council Member Landry wished a happy birthday to Council Member Benning and announced that on Saturday, July 10, 2021 from 9:00 a.m. until 3:00 p.m. is the Christmas in July Bazar at the Ethel Berger Center where there will be various options for people to check out. From 10:00 a.m. until noon will be the 24<sup>th</sup> annual Back to School Fair at the Sierra Vista Mall. It provides information about educational opportunities for learners and a variety of family services. There is Pre-K to 12 schools, colleges, and universities as well as information on after school programs, and hot dogs and refreshments.

Council Member Umphrey wished Council Member Benning a happy birthday and welcomed his family who is visiting, thanked Council Members for the frank/spirited discussion during the work session, and she respects everyone's comments and appreciate how well thought and effort

was put into the decision made. Lastly, she thanked the Rotary and all sponsors for the fireworks, which were amazing on July 4, 2021.

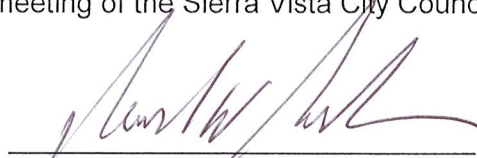
Mayor Pro Tem Gray wished Council Member Benning a happy birthday and congratulated Mr. Cline on his new position and stated that the July 4 events were amazing. Lastly, she announced that Good Morning Sierra Vista will be on Tuesday, July 13, 2021 at 7:00 a.m. at Cochise College where they will have a panel/real estate focused. Ms. Edwards Barton with the Chamber of Commerce stated that there will be a panel discussion that is going to include a local broker, local restaurant owner as well as a local hardware store owner and a nonprofit to talk about how they entered COVID challenges and how they succeeded and what they are looking forward to in the future.

Call to the public – there was no response.

Mayor Mueller thanked staff regarding the preparation of the items, it represents a lot of work and they answered tough questions by Council and did that in a professional manner, which he appreciates. He also thanked everyone in the community for a safe July 4, 2021 in a very dry situation. He thanked the Sierra Vista Rotary Club, Fort Huachuca, Kiwanis, city staff, and many others for making July 4, 2021 special. He announced that the next meeting will be a at 4:30 p.m. on July 20, 2021 for approval of the budget. He noted that the date and time is different for those members of the public that may want to attend and comment. In closing, he welcomed Council Member Benning's visitors from Virginia.

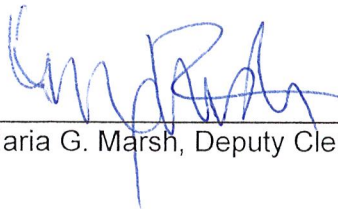
Adjournment

Mayor Mueller adjourned the July 8, 2021, meeting of the Sierra Vista City Council at 5:47 p.m.



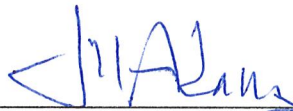
Mayor Frederick W. Mueller

MINUTES PREPARED BY:



Maria G. Marsh, Deputy Clerk

ATTEST:



Jill Adams, City Clerk