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 Thrascher, 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 Carnicería 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 Carnicería 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 dilapitated 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 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 Could 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. Forevermore, 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.

[Signature]
Mayor Frederick W. Mueller
MINUTES PREPARED BY:

Maria G. Marsh, Deputy Clerk

ATTEST:

Jill Adams, City Clerk