

ORDINANCE NO. 1274

AN ORDINANCE AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE II (ELECTIONS), SECTION 2-21 (TITLE), AND SECTION 2-21 (a), (b) , SECTION 2-24 (QUALIFICATIONS OF ELECTED OFFICIALS), SECTION 2-25 (VACANCIES), AND NEW SECTION 2-29 (AMENDMENTS), OF THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO

WHEREAS, the Territorial Charter of the Town of Silver City, Article III, Sections 1 through 5, authorizes and provides for the Town Council to regulate the conduct of elections for officers of the Town; and

WHEREAS, the Constitution of the State of New Mexico, Article X, Section 6 E. dealing with municipal powers states: “The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities. (As added November 3, 1970.)” ; and

WHEREAS, this provision concept is memorialized in New Mexico Statutes, Section 3-3-1 which states: "Any municipality, incorporated by special act previous to April 1, 1884, which chooses to retain such organization and charter, shall, in the enforcement of the powers or the exercise of the duties conferred by the special act or charter, proceed in all respects as provided by the special act or charter."; and

WHEREAS, in Chapter 2, Article II, Section 2-21 and pursuant to the Town’s Territorial Charter, the Town adopted by ordinance the State of New Mexico Municipal Election Code as a convenient and comprehensive regulatory scheme for the regulation of municipal elections; and

WHEREAS, in the 2018 regular session, the State Legislature passed a bill referenced as “Local Election Act”, effective July 1, 2018, which repeals the Municipal Election Code and substitutes another body of provisions for the regulation of local elections, commonly known as the “Local Election Act” (1-22-1 et seq. NMSA); and

WHEREAS, in the Local Election Act, the State Legislature specifically recognizes the legal existence and authority of the Town's Special Act Territorial Charter and defines its relationship with provisions of the Local Election Act, specifically stating:

"Section 1-22-3 D. Provisions in a territorial charter supplemental to the Local Election Act may be implemented pursuant to authorization by the secretary of state in the proclamation for the regular local election."

And,

"Section 1-22-3.1 D. For municipalities that elect their officers on municipal officer election day, all provisions of the Local Election Act as supplemented by the Election Code apply, except as provided in this section and except for those election procedures contained in the charter of a home rule municipality that operate in lieu of or in addition to the provisions of the Election Code."; and

WHEREAS, in order to comply with the mandate of its Territorial Charter, Municipal Code, and applicable sections of the Local Election Act, the Town Council has determined that the adoption of the amendments herein are necessary to the health, safety and welfare of the Town; and

WHEREAS, this Ordinance does hereby prescribe the manner of regulation of the Town's local elections, and the Town Council finds that this Ordinance is necessary for the health, safety, and welfare of the Town and its inhabitants;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:
THE FOLLOWING AMENDMENTS SHALL BE MADE TO THE TOWN'S MUNICIPAL CODE.**

Chapter 2, Section 2-21 (Title) and Subsections (a) and (b) thereunder are hereby deleted and replaced with:

Section 2-21. Municipal Elections.

(a) *Authority*. Territorial Charter of the Town of Silver City and Local Election Act (1-22-1, et seq. NMSA 1978).

(b) *By reference*. The Town hereby adopts the State of New Mexico Local Election Code, Section 1-22-3.1, as herein amended as the Town's Municipal Election Code. When a matter of duty or procedure in the conduct of the Municipal Officer Election for the Town is not covered within this Municipal Election Code, the State of New Mexico Election Code shall govern.

Section 2-24. is hereby deleted in its entirety and replaced with:

Section 2-24. Qualification of Elected Officials. All officers elected as said municipal election shall qualify and enter upon the discharge of their duties as provided by the State of New Mexico Local Election Act of 2018.

Section 2-25. is hereby deleted in its entirety and replaced with:

Section 2-25. Vacancy on Governing Body. Any vacancy on the governing body of mayor-council municipality shall be filled by appointment of a qualified elector by the mayor of the municipality, with the advice and consent of the governing body. Any qualified elector appointed to fill a vacancy on the governing body shall serve until the next regular local election, at which time a qualified elector shall be elected to fill the remaining unexpired term, if any.

Chapter 2 is amended by adding a new Section 2-29, which shall read:

Section 2-29. Amendments to Provisions of Local Election Act of 2018. The Town of Silver City Election Code shall be compiled and incorporated into the Town of Silver City Municipal Code as Appendix D, and which shall reflect the following amendments to the State of New

Mexico Local Election Act as adopted by the Town as its Municipal Election Code.

Section 1-22-3 is deleted in its entirety.

Section 1-22-3.1 is deleted and replaced with:

Section 1-22-3.1

A. The municipal officers election day shall be the first Tuesday in March, annually.

B. Declarations of candidacy for the municipal officer election shall be filed between 9:00 a.m. and 5:00 p.m. on the fifty-sixth day before the election. The last day to file a statement of withdrawal from candidacy is forty-nine days before the election. Write-in candidates for municipal officer elections shall file declarations of candidacy between 9:00 a.m. and 5:00 p.m. on the forty-ninth day before the election. The last day to file a statement of withdrawal for write-in candidates shall be on the forty-seventh day before the election.

C. The term of office for elected officers shall begin the first day of the month following the election.

D. Ballot questions may be placed on the ballot of an election of municipal officers as provided in this section and as otherwise provided for in the Local Election Act.

E. The municipal clerk shall fulfill the duties of the county clerk in the conduct of elections held pursuant to this section, and for recall elections and special elections which shall be held pursuant to Section 1-24-3 NMSA 1978.

F. In October or November of each year, the Town Council shall adopt an election resolution calling for the election. The election resolution shall be published in a newspaper of general circulation in the county, in both English and Spanish, once within fifteen days of adoption and again not less than sixty days prior to the election. The resolution shall specify the:

1. date when the election will be held;

2. elective positions to be filled, including the Council district for each of the Councilor positions;
3. each district or consolidated district for the election;
4. questions to be submitted to the voters;
5. location of the polling place for each district or consolidated district that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;
6. hours each polling place will be open;
7. date on which declarations of candidacy are to be filed;
8. date on which declarations of intent to be a write-in candidate are to be filed;
9. date and time for absentee and early voting; and
10. date and time of the closing of the registration books by the county clerk as required by law.

A copy of such resolution shall be delivered to the Secretary of State and the County Clerk within fifteen days of passage.

Section 1-22-3.2 is deleted in its entirety.

Section 1-22-4 is deleted in its entirety.

Section 1-22-7 A is deleted and replaced with:

A. A candidate for a position that will be filled at the municipal officer election shall file a declaration of candidacy with the municipal clerk during the period commencing at 9:00 a.m. on the fifty-sixth day before the date of the municipal election and ending at 5:00 p.m. on the same day.

Section 1-22-7 B is deleted in its entirety.

Section 1-22-7 C is deleted and replaced with:

B. A declaration of candidacy shall not be amended after it has been filed with the municipal clerk.

Renumber subparagraph D to subparagraph C.

Section 1-22-8.1 A. is deleted and replaced with:

A. Write-in candidates shall be permitted in municipal officer elections.

Section 1-22-8.1 C. is deleted and replaced with:

C. A person desiring to be a write-in candidate for an office shall file with the municipal clerk a declaration of candidacy. The declaration shall be filed between 9:00 a.m. and 5:00 p.m. on the forty-ninth day preceding the date of the election. The municipal clerk shall insure that a declaration of candidacy filed pursuant to this section specifies that it is for a write-in candidate.

Section 1-22-8.1 G is deleted in its entirety.

Section 1-22-9 is deleted in its entirety and replaced with:

A candidate seeking to withdraw from the municipal officer election shall withdraw no later than 5:00 p.m. of the forty-ninth day before that election by filing a signed and notarized statement of withdrawal with the municipal clerk. A write-in candidate seeking to withdraw from said election shall withdraw no later than 5:00 p.m. of the forty-seventh day before that election by filing a signed and notarized statement of withdrawal with the municipal clerk.

Section 1-22-10 A. is deleted in its entirety and replaced with:

A. The municipal clerk shall determine whether a candidate filing a declaration of candidacy is registered to vote within the Town of Silver City and within the correct Council District, if residency in such District is required for the elected position sought. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the Local Election Act, the municipal clerk shall place the candidates name on the ballot for the position specified

in the declaration of candidacy and notify each candidate in writing no later than 5:00 p.m. of the third day following.

Section 1-22-10 B. is deleted in its entirety and replaced with:

B. Ballots for the municipal officer election shall be prepared by the municipal clerk and printed in accordance with the provisions of Section 1-10-5 NMSA 1978. The printed ballot shall contain the name of each person who is a candidate and the position for which the person is a candidate. The ballot shall also contain all questions permitted by the Town Council pursuant to Section 1-22-10.1 NMSA, 1978 that are to be submitted to the voters as certified to the municipal clerk and shall conform to the requirements of Section 1-16-8 NMSA, 1978.

Section 1-22-10 D is deleted in its entirety and replaced with:

D. The municipal officer election shall be a non-partisan election, and the names of all candidates shall be listed on the ballot without party or slate designation. At 5:15 p.m. on the forty-ninth day preceding the election, in the presence of the certified candidates or their authorized representatives who desire to be present, the municipal clerk shall administer an impartial and fair drawing by lot to determine the order in which the candidates for each office shall be listed on the ballot. If a candidate or an authorized representative fails to appear, then the municipal clerk shall draw a lot for the absent candidate.

Section 1-22-10.1 A. is deleted in its entirety and replaced with:

The municipal officer election ballot shall list offices in the following order, when applicable:

1. the mayor;
2. the Town councilors;
3. the municipal judge; and

4. questions.

Section 1-22-10.1 B. and C. are deleted in their entirety.

Section 1-22-11 is deleted in its entirety and replaced with:

The municipal clerk shall cause to be published in a newspaper of general circulation in the county a legal notice which contains the names of the candidates for each office to be filled in the order in which the names appear on the ballot, the location and address of the polling places, and the names of all precinct board members and alternates. Such publication shall conform to the provisions of the federal Voting Rights Act of 1965 as amended. Such publication shall be made once each week for two successive weeks, with the last publication being made within twelve days, but not later than five days before the date of the municipal election.

Section 1-22-13 A. is deleted in its entirety and replaced with:

A. Upon written notice filed with the municipal clerk no later than seven days before the election, any group of three candidates in such municipal officer election may appoint watchers who shall be qualified electors within the Town and who shall have the powers and be subject to the restrictions provided for watchers in the State of New Mexico Election Code, Section 1-2-29.

Section 1-22-15 A. is deleted in its entirety and replaced with:

A. The canvassing board for the canvass of the results of the municipal officer election shall be composed of the municipal clerk and members of the Town Council who are not candidates for municipal office. The municipal clerk and the persons called to open the returns are the municipal canvassing board, and the municipal clerk shall be the presiding officer of the municipal canvassing board.

Section 1-22-15 B.(2) is deleted in its entirety and replaced with:

(2) issue a certificate of canvass of the results of the election and send one copy of the

certified results to the secretary of state and county clerk, and shall immediately file the certificate of canvass in the official minute book of the Town.

Section 1-22-15 C. is deleted in its entirety.

Section 1-22-15 D. is deleted in its entirety and replaced with:

C. In the event of a tie vote between any candidates in the election for the same office, the determination as to which of the candidates shall be declared to have been elected shall be determined by lot. The method of determining by impartial lot shall be mutually agreed by the candidates who are tied, and the drawing by lot shall be conducted by the municipal clerk. The municipal clerk shall issue a certificate of election to the candidate chosen by lot.

Section 1-22-15 E. is deleted in its entirety.

Section 1-22-15 F. is deleted and replace with:

D. The municipal clerk shall issue a certificate of election to each candidate who received the most votes for each position on the ballot and shall certify the passage or defeat of each ballot question.

Section 1-22-16 is deleted in its entirety.

Section 1-22-17 is deleted in its entirety.

Section 1-22-18 is deleted in its entirety.

Section 1-22-19 is deleted in its entirety and replaced with:

Section 1-22-19. Absentee voting.

A. The provisions of the Absent Voter Act (Sections 1-6-1 through 1-6-18 NMSA 1978) and Uniform Military and Overseas Act (Chapter 1, Article 6B NMSA 1978) apply to absentee voting in the municipal officer elections.

B. Absentee and early voting shall be conducted in the office of the municipal clerk

pursuant to Section 1-6-5 NMSA 1978, except that all references therein to "county clerk" shall be replaced by the words "municipal clerk", and all references therein to the "office of the county clerk" shall be replaced by the words "office of the municipal clerk".

Section 1-22-20 is deleted in its entirety and replaced with:

Section 1-22-20. Organizational Meeting.

At the first meeting of the Town Council at which newly elected officials are in attendance the Mayor shall make appointments of Councilors to various committees, boards, groups, and commissions at it may be in his/her discretion. In conformance with provisions of the Town's Municipal Code the Mayor shall have no power to hire, fire, or impose any conditions upon employees currently then in the employ of the Town, or unilaterally modify collective bargaining agreements as they may exist.

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PASSED, ADOPTED AND APPROVED by vote of the Town Council of the Town of Silver City, Grant County, New Mexico, this 13th day of November, 2018.

(Seal)

TOWN OF SILVER CITY

/s/ _____
Ken Ladner, Mayor

Attest:

/s/ _____
Ann L. Mackie, Town Clerk