

1. 6:00 P.M. February 8, 2022 Town Council Meeting Materials

Documents:

[2022 02 08 AGENDA REGULAR MEETING.PDF](#)
[2022 01 25 DRAFT MINUTES REGULAR COUNCIL MEETING.PDF](#)
[NOI ORD 1309 SUMMERY FOR PUB AMENDING CH 32 NUISANCES.PDF](#)
[2022 02 08 LEGAL NOTICE REGULAR COUNCIL.PDF](#)



TOWN OF SILVER CITY COUNCIL

REGULAR MEETING AGENDA

February 8, 2022, 6:00 PM

GRANT COUNTY ADMINISTRATION CENTER, 1400 HWY. 180 E., SILVER CITY, NM

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE AND SALUTE TO THE NEW MEXICO STATE FLAG

2. CHANGES TO AGENDA

3. CEREMONIES - NONE

4. PROCLAMATIONS- NONE

5. COUNCIL COMMENTS

6. APPROVAL OF MINUTES

A. Regular Meeting on January 25, 2022.

7. PUBLIC INPUT-

8. REPORTS

A. **Staff Reports.** Police Chief Freddie Portillo

9. PUBLIC HEARINGS - NONE

10. UNFINISHED BUSINESS - NONE

11. NEW BUSINESS

A. APPROVAL / DISAPPROVAL OF NOTICE OF INTENT TO ADOPT AN ORDINANCE 1309, AMENDING CHAPTER 32 (NUISANCES), ARTICLE 1 (IN GENERAL), SECTIONS 32-1 THROUGH 32-32, ARTICLE II (ABANDONED VEHICLES), SECTIONS 32-33 THROUGH 32-49, ARTICLE III (RESERVED), SECTIONS 32-50 THROUGH 32-64, PROVIDING DEFINITIONS AND EXAMPLES; PROVIDING FOR ABATEMENT; AND SPECIFYING LEGAL PROCESS.

ADJOURNMENT

Town of Silver City Council Members

<u>Name</u>	<u>Elected Position</u>	<u>Telephone</u>	<u>Term of Office</u>
Ken Ladner	Mayor	575-534-6346	01/2022 - 12/2025
Lucian Farmer	Councilor, District 1	575-284-9293	01/2022 - 12/2023
Nicholas H. Prince	Councilor, District 2	575-242-9002	01/2022 - 12/2025
Jose A. Ray, Jr.	Councilor, District 3	575-313-4944	03/2020 - 12/2023
Guadalupe Cano	Councilor, District 4	575-597-7034	01/2022 - 12/2025

MISSION STATEMENT OF THE TOWN OF SILVER CITY

Silver City is the hub of an inclusive community settled within a small town that through guided growth, honors and preserves its historical, cultural, and natural heritage while facilitating jobs, health, and education resources such that the residents and visitors may enjoy and protect the recreational opportunities of the area and high quality of life.

Approved by the Town Council on May 25, 2010.

The Council may call an EXECUTIVE SESSION pursuant to NMSA 1978 Section 10-15-1(H) for the following reasons:

1. meetings pertaining to **issuance, suspension, renewal or revocation of a license**, except that a hearing at which evidence is offered or rebutted shall be open;
2. **limited personnel matters** means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee;
3. deliberations by a public body in connection with an **administrative adjudicatory proceeding**;
4. the **discussion of personally identifiable information about any individual student**, unless the student or the student's parent or guardian request otherwise;
5. meetings for the **discussion of bargaining strategy preliminary to collective bargaining negotiations** between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;
6. that portion of meetings at which a decision concerning **purchases in an amount exceeding \$2,500 that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code (13-1- 28 NMSA 1978) are discussed during the contract negotiation process**. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;
7. meetings subject to the **attorney-client privilege pertaining to threatened or pending litigation** in which the public body is or may become a participant;
8. meetings for the **discussion of the purchase, acquisition or disposal of real property or water rights** by the public body.

Note: NMSA 1978 Section 10-15-1(H) Exceptions (4) relating to students, (9) relating to public hospitals, and (10) relating to the gaming control board were not listed above since they do not apply to the Town of Silver City.

**For information on what's happening in local government,
please visit the Town's website at www.townofsilvercity.org**

THE TOWN OF SILVER CITY COUNCIL MINUTES
REGULAR COUNCIL MEETING
GRANT COUNTY ADMINISTRATION CENTER, 1400 HWY. 180 E., SILVER CITY, NM
January 25, 2022, 6:00 p.m.

Members Present:

Ken Ladner, Mayor
Lucian Farmer, District 1
Nicholas Prince, District 2
Jose A. Ray, Jr., District 3
Guadalupe E. Cano, District 4

Others, present:

Alex C. Brown, Town Manager
Freddie Portillo, Chief of Police
Alfred Sedillo, Town Clerk
Bart Roselli, Museum Director
Allyson Siwik, Executive Director, Gila Resources
Information Project
Geoffrey Plant, Silver City Daily Press
Roger Lance, Grant County Beat
Ben Beltron, Executive Director, CATS

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE AND SALUTE TO NEW MEXICO STATE FLAG- Mayor Ladner called the meeting to order at 6:00 p.m. public was invited the public to recite the pledge of Allegiance and the Salute to the New Mexico State Flag. The Mayor welcomed Chief of Police Freddie Portillo, the news media, staff and the members of the community.

2. CHANGES TO AGENDA – Mayor Ladner asked if there were any changes to the agenda, Town Clerk Alfred Sedillo stated that he was not aware that there were three other applicants for the Planning and Zoning Commission and advised Mayor Ladner to remove item 11 B from the agenda, this would allow the Chairman of the Planning and Zoning Commission to review applications and interview each candidate in order for him to make the recommendation. Mayor Ladner agreed; therefore, each candidate would have equal opportunity. Mayor Ladner asked for a motion. Councilor Farmer moved to remove 11 B from the agenda, Councilor Cano seconded motion carried.

3. CEREMONIES – None.

4. PROCLAMATIONS – None.

5. COUNCIL COMMENTS – Councilor Prince thanked everyone for accommodating him for not being able to attend in person due to the passing of his father and thanked the Councilors and community for their condolences. Councilor Prince wanted to congratulate the County for doing as well as it has been during this latest Omicron serge. Councilor Prince stated that while in Florida makes him greatly appreciate the great effort our County and State putting forth the prevention of deaths and encouraged everyone to be vigilant on masking and getting their vaccines and boosters which has been reducing the load on our health care providers.

Councilor Farmer wanted to thank Manager Brown and Clerk Sedillo for their help getting him up to speed for information he had requested.

Councilor Cano had no comments.

Councilor Ray stated he had permission to speak to all the Councilors but was unable to communicate with Councilor Prince. Councilor Ray stated that he would like to see the Council do events down town maybe, once or twice a month. He would like to see events for the kids. Councilor Ray would like to show the community that the Council is united. Manager Brown has okayed the events.

Mayor Ladner advised Councilor's that they should visit with university. The University has events going on regularly, the Council could coordinate with them in case they had an event set for the same date as the Council. Mayor Ladner commented that on Saturday June 22, there was a trash and litter pickup sponsored by Pick It Up and Toss No Mas and Silver City Watershed Keepers. Mayor Ladner stated that when he has participated, they have collected quite a few bottles called shooters; which are about one and

a half ounce. The State Legislature has now changed them to a larger size. Mayor Ladner stated that he has spoken to some teenagers and was advise that they could drink them fast toss them out the car and no longer have an open container in the car. So now he is wondering with the new size which is more alcohol what affect it is having on DUI. Mayor Ladner would like to have some kind of dialog with the State Representative to find out the logic why the larger containers.

6. APPROVAL OF MINUTES – Regular Meeting on January 11, 2022. Councilor Ray moved to approve the Minutes of the Regular Council Meeting of the Town of Silver City of January 11, 2022. Councilor Farmer seconded the motion. No discussion. Mayor asked that all in favor say aye. All in favor. Mayor asked those opposed to say nay. There were none opposed. Motion carried.

7. PUBLIC INPUT – NONE

8. REPORTS – Alex Brown stated that Bart Roselli from the Silver City Museum will be giving a report and that each month a department head would be giving a report since there is a new Council to get them up to speed on each department.

Bart Roselli stated he had hand outs for the Council and thanked everyone for allowing him to give his report on the museum, and thanked the Council and Alex Brown for the support the museum has had. Mr. Roselli stated that in the Councilor's packets there is a list of accomplishments from last year and items that are planned for this year. Mr. Roselli went over a few items on the list and advised that there has been an addition of four members to the Silver City Museum Society Board. This brings diversity to the Society Board which supports the museum to the tune of about one hundred and fifty thousand dollars a year and is very well represented by the Silver City and Grant County community. Mr. Roselli stated that they had gone to a new newsletter format in order to pack in more information and create a higher impact. The newsletter is now mailed out to all the members of the Museum. Mr. Roselli went over some exhibits and programs the museum is working on and stated that there is a New Mexico Association of Museums and each year they have a meeting. Last years was a virtual presentation, but this year they will be coming to Silver City in November for their meeting. This meeting will bring about two to three hundred people from New Mexico, Arizona, Colorado and Texas. In closing Mr. Roselli advised the Council that there was an application in the handout for membership to the Museum Society and encouraged them to join. Councilor Cano commented that she was happy that board has a couple of young people on the board and also stated the herself and Councilor Ray spoke Spanish and it would be nice that the next time there was story telling they would like to be invited. Mayor Ladner stated that he would like to thank Mr. Roselli and his staff for what they have done and they have really raised the bar. He said that the staff is friendly and helpful and there is a whole different attitude.

Mr. Brown introduce Allyson Siwik from the Silver City Water Keepers. Ms. Siwik stated that the partnership with the Town of Silver City has restarted the Pick It Up Toss No Mas litter campaign that Mayor Ladner started back in 2018. Ms. Siwik stated since Covid there has been a lot of trash throughout the community and wanted to really get the program restarted. Ms. Siwik also explained what the Silver City Water Keepers program entailed for those who did not know. Ms. Siwik went back to the Pick It Up Toss No Mass program and advised that the program has received funding from the New Mexico Clean and Beautiful program and the Town of Silver City to basically to get the community in gauged in trash clean up and also prevention of litter. They started in October with a big trash bash with over sixty volunteers with the first event and have been organizing trash clean up the third Saturday of every month from 9:00 to 1:00. There are snacks and supplies provided to the volunteers and are assigned areas or they can also clean their own neighborhoods. The program is also partnering with the New Mexico Department of Transportation to clean Highways 180 and 90 within city limits, along with people who have adopted roadways to come out and keep them clean. Ms. Siwik stated that to date there has been one hundred and nineteen volunteers with over three hundred and thirty volunteer hours which has to be reported for the grants they receive. Everyone must sign in and keep track of the hours. Also, they are keeping track of all the trash so people have to bring all the trash to the meeting site at Gough Park to be weighed. To date they have picked up two thousand eight hundred and eighty-three pounds of trash and debris and two hundred and ninety-seven pounds of recyclables. They are also cleaning up the creeks like San Vicente, P. A. and Silva creeks. Ms. Siwik wanted to thank all the volunteers and partners Town of

Silver City, New Mexico Clean and Beautiful and New Mexico Department of Transportation for bringing a dump truck to load all the bags and take them to the landfill. Silver City Recycle, Silver City Main Street Swimmate and Southwest Solid Waste Authority. There is a steering committee that meets and has funding for ads to help Southwest Solid Waste Authority to promote their Cover Your Load campaign and collaborating with Dora Gonzales to do radio ads. Ms. Siwik wanted to thank Mayor Ladner for being out there helping out, James Marshall on the steering committee, Manny Jaure, the Police Department and Code Enforcement who has been helping with safety issues at San Vicente Creek along with Jacqui Olea with the Planning Department who has redone the Toss No Mas maps. Ms. Siwik would like to encourage the public to adopt a roadway or a stream segment. There is more information on their website at www.silvercitywatershedkeepers.org or people can email them at tossnomas@gmail.com if they have any questions. Ms. Siwik also wanted to thank their business partners: Morning Star, Gila Hike and Bike, La Bonita Bakery, Diane's Bakery, Little Toad Creek, Silver City Food Coop and special thanks to Skywest Media who has been matching their radio ads for every radio spot we get a free spot. Mayor Ladner asked how many volunteers they had at last Saturday's event. Ms. Siwik advise Mayor Ladner that they had 31 volunteers and pick up eight hundred and thirty-one pounds of trash debris which filled the DOT dump truck. Mayor Ladner also recognized that there are not only individual volunteers, but groups and organizations helping as well. Ms. Siwik recognized WNMU Women's Volleyball team and coaches, two individuals from Westerns Life Long Learning. She encourages groups, teams, organizations and businesses to join in to clean and adopt a roadway. Also, Ms. Siwik recognized the Silver City Rolling Stones who were out on Saturday volunteering on highway 90 and had done a fantastic job.

9. PUBLIC HEARINGS – NONE

10. UNFINISHED BUSINESS – NONE

11. NEW BUSINESS –

A. Approval / Disapproval of BID 21/22-1 2021 Colonias Water System Improvements:

Mr. Brown stated that they had received two proposals, one from DNR Tank Company and Riley Industrial Services, Inc. The staff's recommendations are to award the bid to DNR Tank Company in the amount of \$871,580.00 plus gross receipt taxes for a total of \$941,306.40. All will be covered under the 2021 Colonias Grant. Mr. Brown explained that there was a little of \$300,000.00 remaining from 2020 Grant to do the South Tank on Chloride. This is to do North Tank on Chloride and they got permission to use the remainder of last year to do this project. Mr. Brown stated that with those additional funds and the \$1.1 million dollars that they were awarded in 2021 that there will be about \$400,000.00 left over as long as everything goes well with this bid and that he as already gotten permission to use the remaining funds for the last Chloride Tank East. Mr. Brown stated that in all reality with the two grants, they are trying to do three phases. One grant for phase one for the North phase, phase two the South, and phase three the East. Hopefully with the two Grants we are able to complete the renovation of all three tanks. Once they are complete, they will move on to some of the tanks at well fields.

Mr. Brown stated that they are applying in 2022 for a replacement tank at the Gabby Hayes well field, there is a one hundred fifty-thousand-gallon water tank that is used for storage and that is where they do chlorination from those wells, that is where they want to replace with a three hundred fifty-thousand-gallon water tank because the older tank was constructed in the 1960's so that tank needs replacement and the need to increase capacity as well. Mayor Ladner asked for a motion, Councilor Cano moved to approve **BID 21/22-1 2021 Colonias Water System Improvements** to be awarded to D & R Tank Company for the base bid in the amount of \$871,850.00 plus gross receipt tax for a total construction cost of \$941,306.40. Councilor Ray seconded. Mayor asked for a roll call vote. Councilor Farmer voted aye; Councilor Prince voted aye; Councilor Ray voted aye; and Councilor Cano voted aye. Motion carried.

Mayor Ladner wanted to thank the Council for all of their hard work and attending the Council meetings. Mayor Ladner stated that its not just attending the Council meetings, the Council is actively involved in our community.

12. ADJOURNMENT - Mayor Ladner concluded the meeting and asked for a motion. Councilor Farmer moved to adjourn; Councilor Ray seconded. Mayor Ladner stated there was a motion and a second to adjourn. He asked for a vote of all those in favor, and all four Councilors said aye. Motion carried. Meeting adjourned at 7:15 pm.

Ken Ladner, Mayor

Attest:

Alfred Sedillo, Town Clerk

DRAFT

**NOTICE OF INTENT
TO ADOPT AN ORDINANCE AMENDING CHAPTER 32 (NUISANCES), ARTICLE 1
(IN GENERAL), SECTIONS 32-1 THROUGH 32-32, ARTICLE II (ABANDONED
VEHICLES), SECTIONS 32-33 THROUGH 32-49, ARTICLE III (RESERVED),
SECTIONS 32-50 THROUGH 32-64, PROVIDING DEFINITIONS AND EXAMPLES;
PROVIDING FOR ABATEMENT; AND SPECIFYING LEGAL PROCESS.**

The Council of the Town of Silver City, Grant County, New Mexico hereby gives notice of its intention to adopt an amendment to the Town of Silver City Code of Ordinances. This notice is hereby given the title as follows:

ORDINANCE NO. 1309

**AN ORDINANCE AMENDING CHAPTER 32 (NUISANCES), ARTICLE 1 (IN
GENERAL), SECTIONS 32-1 THROUGH 32-32, ARTICLE II (ABANDONED
VEHICLES), SECTIONS 32-33 THROUGH 32-49, ARTICLE III (RESERVED),
SECTIONS 32-50 THROUGH 32-64, PROVIDING DEFINITIONS AND EXAMPLES;
PROVIDING FOR ABATEMENT; AND SPECIFYING LEGAL PROCESS.**

Sponsored by Councilor Jose Ray

WHEREAS, Town ordinances provide for code enforcement to cite into municipal court those who perpetrate, maintain or commit nuisances; and

WHEREAS, Town ordinances also provide for elimination and abatement of nuisances; and

WHEREAS, nuisances have been and continue to be an ongoing problem for many municipalities including the Town and its inhabitants; and

WHEREAS, nuisances are detrimental to the health, safety and welfare of the Town's inhabitants; and

WHEREAS, the challenges presented to town personnel by nuisances require that the Town's nuisance ordinance be amended, in order to afford town personnel flexibility, clarity and specificity for the abatement, control and elimination of nuisances; and

WHEREAS, the amendment of the Town’s nuisance ordinances is appropriate for the health, safety and general welfare of the Town and its inhabitants.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:

1. Chapter 32 (Nuisances), Article I (In General), Sections 32-1 through 32-32 are deleted in their entirety and replaced with the following to now read:

CHAPTER 32 – NUISANCES

ARTICLE 1. – IN GENERAL

Sec. 32-1. – Public nuisance.

- (a) It is unlawful, and a violation of the town’s municipal code, for any person to cause, commit, maintain or allow the creation, maintenance or existence of a public nuisance.
- (b) A public nuisance means any person doing an unlawful act, failing to perform a duty, or performing, permitting, or maintaining any condition or thing to exist, and the act, omission, condition or thing either:
 - (1) Injures or endangers the comfort, welfare, repose, health or safety of others;
 - (2) Interferes with, obstructs, or tends to obstruct, or renders dangerous for passage any public or private street, sidewalk, right-of-way, stream, ditch or drainage;
or
 - (3) Interferes with the exercise of public rights, or tends to fundamentally diminish or interfere with the enjoyment of life and property, or tends to depreciate the value of the property of others.
- (c) Upon conviction of a person by a court of competent jurisdiction for violating any provisions of this chapter, and for which a penalty is not otherwise specifically

provided, shall subject said person to the penalties prescribed under the general penalty section 1-9.

Sec. 32-2. – Illustrative enumeration of nuisances.

- (a) The maintaining, producing, placing, depositing, leaving, or permitting to be or remain on any public or private property any of the following items, conditions or actions is declared to be and constitute a nuisance, provided that this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:
- (1) Noxious weeds or other rank vegetation which produce noxious odors;
 - (2) Accumulations of rubbish, trash, refuse, filth, litter, junk, and other abandoned or discarded items or material, metals, lumber, plastic or other things;
 - (3) Any condition which provides harborage for rats, mice or other rodents, snakes or other vermin;
 - (4) Any building, structure or any accumulation of any material or item or items used as a building or structure, that is in such a dilapidated condition that it is unfit for human habitation, or is kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity where it is located, or presents a fire hazard in the vicinity where it is located;
 - (5) Any condition that is attractive and dangerous to children, such as vacant, accessible buildings, excavations, abandoned machinery or appliances, dilapidated walls or fences or barbed wire fences, or wood, rock, gravel or sand piles or debris on vacant lots, and not adequately secured from the public;
 - (6) All unnecessary noises or unauthorized noises and annoying vibrations, including animal noises;

- (7) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances, or other causes which give rise to the emission or generation of such odors and stenches;
- (8) The carcasses of animals or fowl not disposed of within a reasonable time;
- (9) The pollution of any public or private well or cistern, stream, spring, creek, lake, pond, ditch, canal, waterway, or declared or known groundwater, or other body of water by introducing any object or substance causing it to be offensive or dangerous for human or animal consumption or use;
- (10) Any building or structure or other place or location where any activity in violation of local, state, or federal law is conducted, performed or maintained;
- (11) Any accumulation of stagnant water which is permitted or maintained on any piece of ground or property that produces noxious odor or constitutes a health hazard;
- (12) The permitting of aggressive and undesirable bee behavior as defined in Chapter 6 or permitting any other activity by bees that may result in harm to others;
- (13) Dense smoke, noxious fumes, gas, soot, or cinders in unreasonable quantities, or fails to dissipate within a reasonable amount of time;
- (14) An owner, custodian, or any person having possession of any animal and permitting or allowing the animal to: molest or harass pedestrians, passing vehicles or bicycle; attack, bite or display menacing behavior towards humans or other animals; trespass on schools, hospital grounds or public or private property; running at large; damage or deface public or private property; bark,

whine, or howl excessively; emits or causes noxious or offensive odors; or, act in any manner that may annoy or injure humans.

Sec. 32-3 – Citation or complaint; notice to abate.

Whenever a nuisance is found to exist within the town or town's jurisdiction, a duly designated officer of the town may either:

- (a) Issue a summons, citation, and/or complaint to the offender, being the owner of record of the property on which the nuisance occurs, or the occupant or tenant of the property where the nuisance is located, or person causing or maintaining the nuisance, or to each and every one, to appear before the municipal court for violation of this article; and/or
- (b) Issue to the owner of record of the property on which the nuisance occurs, or to the occupant or tenant of the property where the nuisance is located, or person causing or maintaining the nuisance, or to each and every one, a written notice to abate the nuisance, providing a time specified in the notice for abatement that is reasonable under the circumstances.
 - (1) The person receiving the notice to abate shall have ten (10) days from the issuance of the notice to file with the town clerk a written request for a hearing before the Town Council regarding any issue relating to the notice to abate the nuisance.
 - (2) Upon receiving a written request for hearing before the Town Council, the town clerk shall schedule a hearing at a certain date and time, schedule the hearing on the agenda of the Town Council, and provide written notice by

regular first-class U.S. mail of the date, time and place of the hearing to the person who requested the hearing and to code enforcement.

- (3) At the hearing, the Town Council shall determine, by a preponderance of the evidence, if the alleged nuisance exists, any time frame for abatement of the nuisance, require the offender to be responsible for the costs thereof, and any other issue concerning the alleged nuisance.
 - (4) Upon issuing a final decision in an abatement hearing, the town manager or designee shall prepare the written decision of the Town Council that includes an order granting or denying relief and a statement of the factual and legal basis for the order, and file the written decision with the town clerk in the official public records of the Town. The town clerk shall then serve by regular first-class U.S. mail a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on all persons who were parties in the proceeding before the Town Council and every person who has filed a written request for notice of the final decision.
- (c) The performance of any abatement work or initiation of an abatement action by the town shall not relieve the offender from prosecution under this chapter pursuant to Section 32-3 (a) for violation of this chapter.

Sec. 32-4 – Contents of notice to abate; service of notice.

- (a) The notice to abate a nuisance issued under section 32-3 (b) shall contain the following:
 - (1) A description and location of the nuisance;
 - (2) The action needed to abate the nuisance;

- (3) An order to abate the nuisance within a specified, reasonable time.
 - (4) A statement advising the person of the right to request a hearing before the Town Council in writing to be filed in the town clerk within ten (10) days from issuance of the notice to abate with said hearing to address any issue regarding the notice.
 - (5) A statement that if the nuisance is not abated as directed and no request for a hearing has been filed with the town clerk within ten (10) days from the issuance of the notice to abate, the town may abate such nuisance and assess the cost thereof against the offender.
- (b) Notice to abate shall be personally served on the owner of record of the property, or occupant or tenant of the property where the nuisance is located, or person causing or maintaining the nuisance, or to each and every one; or if notice cannot be personally served it shall be served by certified mail/return receipt addressed to such person's last known address along with posting a copy of the notice on the building, structure or premise. In the event personal service cannot be made and the address is unknown or cannot be ascertained, a copy of the notice to abate shall be posted on the building, structure or premise and shall also be given by publication to be published once a week for two consecutive weeks in a newspaper of general circulation published within the town.

Sec. 32-5 – Failure to abate; abatement by town.

Upon service of notice to abate pursuant to this article, and the person ordered to abate the nuisance fails to do so within the time stated in the notice, and also fails to request a hearing as prescribed in the notice, then the duly designated officer of the town, or designee, may abate the

nuisance at cost assessed to the person responsible to abate the nuisance. If any offender fails to abate the nuisance after hearing before and order to do so by the Town Council, and fails to appeal the decision of the Town Council to District Court as provided in this chapter, then the duly designated officer of the town, or designee, may abate the nuisance, at cost assessed to the offender.

Sec. 32-6 – Appeal to district court.

Final decision of the Town Council may be appealed by the offender to the District Court pursuant to NMSA 1978, § 39-3-1.1.

Sec. 32-7 – Town's cost declared a lien.

Any and all costs incurred by the town to abate the nuisance, including reasonable attorney fees, shall constitute a lien against the property upon which such nuisance existed. The town manager, or designee, shall prepare the lien which shall include a statement of costs specifying the amount of expenses expended by the town, the date of the abatement, and any other information that may be required by NMSA 1978, § 3-36-1 et seq., or other law, and the lien shall be filed by the town manager or designee with the county clerk. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

Sec. 32-8 – Alternative methods of abatement; recovery and foreclosure.

Nothing in this chapter shall be construed to prohibit or restrict the town from seeking abatement by any other method prescribed by law, including, where a nuisance is found to exist, initiating a complaint in the name of the town to enjoin any and all persons from creating, maintaining or permitting the nuisance, and secure abatement of the nuisance at cost to the

offender; or seeking recovery of expenses and interest by instituting a suit in the town's name for recovery and foreclosure of lien as provided by law.

Sec. 32-9 – Separate process for emergency abatement.

If any nuisance necessitates the dispatch of police, fire, or any other emergency services or should any exigency create the existence of a nuisance deemed to be an immediate or exigent threat to public health, safety or welfare, the town manager may authorize through written findings within a reasonable practicable time those measures necessary and sufficient to abate the emergency, until, if necessary, the procedures contained in this chapter can be safely followed.

Secs. 32-10—32-32. - Reserved.

2. Chapter 32 (Nuisances), Article II (Abandoned Vehicles), Sections 32-33 through 32-49 are deleted in their entirety and replaced with the following to now read:

ARTICLE II. - NUISANCE VEHICLES

Sec. 32-33. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle means any motor vehicle that does not display a current license plate or valid police sticker as defined in NMSA 1978, § 66-3-14, or reasonably appears to have been discarded or unclaimed by its owner or operator.

Dismantled vehicle means any motor vehicle that has been disassembled to any degree which renders it legally inoperable.

Inoperable vehicle means any motor vehicle incapable of operation upon any street or highway in compliance with the laws of this jurisdiction.

Nuisance vehicle means any vehicle that is abandoned, dismantled, inoperable or wrecked and located on public or private property in violation of this chapter.

Private property means any real property within the town that is privately owned and that is not public property, as defined in this section.

Public property means any highway, street, alleyway, easement or right-of-way, which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and also means any other property or facility owned by a governmental entity.

Vehicle means any motor vehicle that is designed to be self-propelled and travel along the ground and includes but is not limited to automobiles, buses, motorbikes, motorcycles, motor scooters, trucks, tractors, go-carts, golfcarts, recreational and all-terrain vehicles, and motor homes.

Wrecked vehicle means any motor vehicle that is disabled or in a state of ruin or dilapidation which renders it inoperable.

Sec. 32-34. – Nuisance vehicles prohibited.

- (a) The presence of an abandoned, wrecked, dismantled, or inoperative vehicle or parts thereof on public property or private property in violation of this article is declared to be a public nuisance and a violation of the municipal code, which may be abated in accordance with this article.
- (b) No person shall park, store, leave or permit the parking, storing, or leaving of any motor vehicle of any kind which is in an abandoned, wrecked, dismantled or inoperative condition (a nuisance vehicle), whether attended or not, upon any

public property within the town for a period of time in excess of seventy-two (72) hours, or upon any private property for a period in excess of thirty (30) days.

(c) This section shall not apply to:

(1) Any vehicle on private property in a building or within an area enclosed by a fence or wall and out of public view, or covered, or;

(2) To any vehicle held in connection with a business enterprise, lawfully licensed by the town and properly operated in the appropriate business zone, pursuant to the zoning laws of the town.

Sec. 32-35. – Notice of nuisance vehicles on private property.

(a) If the nuisance involves a vehicle on private property, the police department or code enforcement department shall serve notice of removal to the occupant of the private property, or if there is no occupant, to the owner or owner's agent, or if unable to locate the occupant, owner or agent of the property, then to the owner of the vehicle, at least ten (10) days before the time of compliance, which shall be set forth in the notice.

(b) The notice shall be in writing and shall be served upon the occupant of the land where the nuisance exists, or if there is no such occupant, upon the owner of the property or his agent, or the owner of the vehicle.

(c) It shall constitute sufficient notice when a copy of the notice of removal is personally served to the occupant or owner of the private property, or the agent, or to the owner of the vehicle, or either or all of them. If the notice cannot be personally served to any of the above, then it may be served by posting a copy of such in a conspicuous place upon the private property on which the vehicle is

located, and mailing a duplicate copy of the notice by certified mail/return receipt to the property's occupant, owner or agent, or to the owner of the vehicle, at the person's last known address. If notice cannot be given pursuant to this section, notice shall be given by publication once in a newspaper of general circulation in the community.

- (d) The occupant of the private property on which the vehicle is located, or the owner or owner's agent, or the owner of the nuisance vehicle, either or all of them, shall be responsible for its removal.

Sec. 32-36. – Citations, Summons, or Complaint.

- (a) After notice to abate is served for a nuisance vehicle on private property and the offender fails to abate the nuisance vehicle within the time period prescribed by this article, then a duly designated officer of the town shall issue a summons, citation, and/or complaint to the offender, being the occupant or tenant of the property where the nuisance vehicle is located, or the owner of record of the property or his agent, or to either and all of them, to appear before the municipal court for violation of this article.
 - (1) In addition to any penalties prescribed by the municipal code contained in general penalty section 1-9 upon conviction of the offender for violation of this section, the court may order the offender to abate the nuisance vehicle or cease the activity causing the nuisance upon terms set by the court, or if the offender fails or has failed to abate the nuisance vehicle, authorize the town to abate the nuisance vehicle at cost to the tenant, occupant, or owner of the property.

Sec. 32-37. – Notice of nuisance vehicles on public property; request for hearing.

- (a) If the nuisance vehicle is located on public property, notice shall be given to the owner of the vehicle or agent by placing the notice on the vehicle and mailing a copy, by certified mail/return receipt, to the owner(s) within twenty-four (24) hours, notifying the offender of the existence of the nuisance and requesting its removal in the time specified in this section.
- (b) Notice shall be given to the owner or his agent at least ten (10) days before the time of compliance, which shall be set forth in the notice.
- (c) If notice cannot be given pursuant to this section, notice shall be given by posting a copy of the notice on the vehicle and publication of the notice once in a newspaper of general circulation in the community.
- (d) The owner or owner's agent is responsible for removing the vehicle at owner's cost.

Sec. 32-38. – Request for hearing for nuisance vehicle on public property; abatement.

- (a) For a nuisance involving a vehicle on public property, the person to whom a notice is directed or their agent may file a written request for hearing with the municipal court within seventy-two (72) hours after written notice has been provided according to this article, for the purpose of contesting the charges by the town or addressing any issue concerning the notice.
- (b) If the offender fails to request a hearing in the time prescribed by this section and fails to abate the nuisance vehicle, or if a request for a hearing is timely filed and a hearing conducted and the violation is affirmed by the municipal judge and the offender fails to remove the vehicle, then the town has the right to abate the

nuisance and remove the vehicle at cost to the owner, and the vehicle may be disposed of according to law.

- (c) The performance of any abatement work or initiation of an abatement action by the town shall not relieve the offender from prosecution under this article for violation of this chapter, and shall upon conviction subject the offender to any penalties prescribed by the municipal code contained in general penalty section 1-9.

Sec. 32-39. – Removal of vehicle from private or public property.

It shall be a violation of the town’s code for any person to interfere with, hinder, or refuse to allow the town’s designated person to remove a nuisance vehicle pursuant to this article. The cost of removal of the vehicle shall be levied upon the owner or occupant of the property for vehicles removed from private property and levied upon the owner of the vehicle for vehicles removed from public property.

Secs. 32-40—32-49. - Reserved.

3. Chapter 32 (Nuisances), Article III (Reserved), Sections 32-50 through 32-64 are deleted in their entirety and replaced with the following to now read:

ARTICLE III. – GRAFFITI AND SPRAY PAINT.

Sec 32-50 – Graffiti Vandalism.

- (a) The term graffiti means inscriptions, words, figures, patterns, markings, or any design that is marked, etched, scratched, drawn, painted, pasted or otherwise affixed or applied to or on any structure or surface.
- (b) The commission of graffiti vandalism is declared to be a public nuisance and a violation of the municipal code, and consists of any person intentionally defacing any real or personal property of with graffiti, to the extent that it was not

authorized in advance by the owner thereof, or despite advance authorization, it constitutes a nuisance pursuant to this chapter.

- (c) A person may be charged with and convicted of the crime of graffiti vandalism as an accessory if the person procures, counsels, aids or abets in its commission, even though not directly committing the crime and although the principal who directly committed such crime has not been prosecuted or convicted.
- (d) Whoever commits graffiti vandalism may be required as a condition of probation or a deferred or suspended sentence:
 - (1) To perform mandatory community service within a continuous period following conviction; and/or
 - (2) To clean up, repair or replace the defaced real or personal property; and/or
 - (3) To make restitution to the property owner for the cost of damages and restoration.
- (e) It shall be unlawful, and a violation of the municipal code, for the owner of any premises, house, structure, building, establishment, lot, yard, wall, or fence within the town, or the agent of such owner, or any person who occupies such premises, to permit graffiti to remain on the premises.
- (f) Any person who shall violate any of the provisions of this section, shall be deemed guilty of a municipal offense upon conviction thereof and shall be subject to the penalties prescribed under the general penalty section 1-9.

Sec. 32-51 – Regulating sale of spray paint to minors.

- (a) Prohibited acts.

- (1) No person shall sell or otherwise transfer any spray paint to a minor, being any person under the age of 18 years, unless the minor is accompanied by a parent or legal guardian at the time of purchase or transfer.
- (2) No minor shall, at the time of purchase of any spray paint container, furnish fraudulent evidence of majority. Proof of age may be shown by any document which contains a picture of the person issued by a governmental agency, including but not limited to a motor vehicle operator's license or military identification card. Such document shall be prima facie proof of age.
- (3) No minor shall, except while accompanied by a parent or legal guardian, possess a spray paint container on any public property or private property except with the express permission of the lawful owner or manager of said private property, or appropriate official of said public property.
- (4) Any person violating any provision this article and is convicted thereof shall be fined not less than \$100.00 or more than \$500.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- (5) Any person who owns, manages or operates a place of business where aerosol containers of paint capable of defacing property are sold shall conspicuously post a copy of this regulation in such place of business, in letters at least three-eighths of an inch high.

Secs. 32-52 – 32-64. – Reserved.

PASSED, ADOPTED AND APPROVED by vote of the Town Council of the Town of Silver City, Grant County, New Mexico, this _____ day of _____, 2022.

TOWN OF SILVER CITY

(Seal)

Ken Ladner, Mayor

ATTEST:

Alfred Sedillo, Town Clerk

Consideration of the final adoption of such proposed ordinance will not take place until at least two (2) weeks subsequent to the date of this notice and only at a public meeting called and held in accordance with Section 3-17-3, N.M.S.A. 1978. Consideration of adoption of said ordinance is currently scheduled for and will not take place prior to March 8, 2022.

/s/ _____

Alfred Sedillo, Town Clerk

February 8, 2022

Date

LEGAL NOTICE

The Town of Silver City Council will hold their Regular Council Meeting scheduled for Tuesday, February 8, 2022 at 6 p.m. at the Grant County Administration Center, 1400 Hwy. 180 East, Silver City, New Mexico. The public is invited to attend. The agenda will include:

Approval of Minutes: Regular Meeting – January 25, 2022

Reports: Chief of Police Freddie Portillo

New Business:

A. NOTICE OF INTENT TO ADOPT AN ORDINANCE 1309, AMENDING CHAPTER 32 (NUISANCES), ARTICLE 1 (IN GENERAL), SECTIONS 32-1 THROUGH 32-32, ARTICLE II (ABANDONED VEHICLES), SECTIONS 32-33 THROUGH 32-49, ARTICLE III (RESERVED), SECTIONS 32-50 THROUGH 32-64, PROVIDING DEFINITIONS AND EXAMPLES; PROVIDING FOR ABATEMENT; AND SPECIFYING LEGAL PROCESS.

Agendas are available prior to the meeting and may be obtained at City Hall, 101 W. Broadway and City Hall Annex, 1203 North Hudson, or on the Town's website, www.townofsilvercity.org. If you have any questions regarding the public hearing, you may contact the Town Clerk at City Hall, 101 W. Broadway or call 534-6346. If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid service to attend or participate in the hearing or meeting, contact the Town Clerk at 534-6346 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact The Town Clerk if summary or other type of accessible format is needed.