



THE BOARD OF TRUSTEES (BOT) AND THE PLANNING, ZONING AND HISTORICAL APPROPRIATENESS COMMISSION (PZHAC) OF THE TOWN OF MESILLA WILL HOLD A JOINT WORK SESSION ON MONDAY, OCTOBER 25, 2021, AT 5:00 P.M., AT THE MESILLA TOWN HALL, 2231 AVENIDA DE MESILLA. ****FOR THE HEALTH & SAFETY OF ALL PUBLIC, MASKS ARE REQUIRED TO ENTER****

1. **Discussion on draft ordinance 2021-02:** Establishing Zoning and Other Regulations for Cannabis as presented by Cannabis Ordinance Committee.

THE BOARD OF TRUSTEES (BOT) OF THE TOWN OF MESILLA WILL HOLD A REGULAR MEETING ON MONDAY, OCTOBER 25, 2021, AT 6:00 P.M., AT THE MESILLA TOWN HALL, 2231 AVENIDA DE MESILLA. ****FOR THE HEALTH & SAFETY OF ALL PUBLIC, MASKS ARE REQUIRED TO ENTER****

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL & DETERMINATION OF A QUORUM
3. CHANGES TO THE AGENDA & APPROVAL
4. PUBLIC INPUT – The public is invited to address the Board for up to 3 minutes. **Space is limited and may require persons giving public input IN PERSON to rotate if capacity of the room is exceeded.**
5. CLOSED SESSION – pursuant to NMSA 1978 Chapter 10-15-1(H)(2): discussion limited to personnel matters in the Community Development Department/all departments.
6. STATEMENT REGARDING CLOSED SESSION AND ROLL CALL VOTE – discussion during the closed session was limited to personnel matters in the Community Development Department/all departments pursuant to NMSA 1978 Chapter 10-15-1(H)(2). – Board of Trustees.
7. APPROVAL OF CONSENT AGENDA: (The Board will be asked to approve by one motion the following items of recurring or routine business. The Consent Agenda is marked with an asterisk *)
 - a) *BOT MINUTES – Minutes of a regular meeting October 12, 2021.
 - b) * PZHAC Case #061298 – 2687 Calle de Parian, submitted by William McIlvaine for the removal of damaged concrete on the corner of Parian and Oeste, install flagstone, remove iron fence sections, and install rock wall instead. **Zoned: Historic Residential (HR).**
8. NEW BUSINESS:
 - a) Resolution 2021-31: A resolution by the Board of Trustees approving a Joint Powers Agreement between the Town of Mesilla, the City of Las Cruces, and Dona Ana County for the governance of the Mesilla Valley Metropolitan Planning Organization (MPO). – Andrew Wray, MVMPO/Planning Manager.
 - b) For discussion: Mesilla Town Code Chapter 5.20 Special Events Licensing. – Requested by Mayor Pro-Tem Johnson-Burick and Trustee Garcia.
9. BOARD OF TRUSTEE COMMITTEE REPORTS
10. BOARD OF TRUSTEE/STAFF COMMENTS
11. ADJOURNMENT

NOTICE:

If you need an accommodation for a disability to enable you to fully participate in the hearing or meeting, please contact us at 524-3262 at least one week prior to the meeting. The Mayor and Trustees request that all cell phones be turned off or set to vibrate. Members of the audience are requested to step outside the Board Room to respond to or to conduct a phone conversation. A copy of the agenda packet can be found online at www.mesillanm.gov.

Posted 10/21/2021 at the following locations: Town Clerk's Office 2231 Avenida de Mesilla, Public Safety Building 2670 Calle de Parian, Mesilla Community Center 2251 Calle de Santiago, Shorty's Food Mart 2290 Avenida de Mesilla, Ristramn Chile Co., 2531 Avenida de Mesilla and the U.S. Post Office 2253 Calle de Parian.

Ordinance 2021-02: Establishing Zoning and Other Regulations for Cannabis

WHEREAS, New Mexico Governor Michelle Lujan Grisham signed House Bill 2 (HB 2) on April 12, 2021, which passed the House 38-32 and the Senate 22-15 during a special legislative session called by the governor, and contains provisions authorizing the possession, consumption, purchase, processing, manufacturing or transporting of cannabis by an individual who is at least twenty-one (21) years of age; authorizing possession, transport, cultivation or processing of cannabis plants in a primary residence by adults age 21 years and older; allowing a certain medical cannabis plants in a primary residence by adults age 21 years and older; allowing a certain medical cannabis dispensary or other non-dispensary applicant to apply to the Department of Health Services (the “Department”) to become a licensed cannabis establishment authorized to engage in the retail sale, cultivation, and manufacturing of cannabis; and allowing the Department, or another entity designated by the Department, to become a cannabis testing facility to test the potency of cannabis and detect any harmful contaminants, and

WHEREAS, the New Mexico Cannabis Regulation Act (NMCRA) has authorized a variety of uses related to the legalization of medical and recreational commercial cannabis activities, which legalization has the potential to greatly expand the legal cannabis market; and

WHEREAS, Cannabis is an intoxicating substance, making it appropriate to regulate the hours during which cannabis products may be sold and the areas in which cannabis products may be consumed; and

WHEREAS, the smoking of cannabis products may create health risks due to exposure to secondhand smoke and vaporized cannabis concentrates; and

WHEREAS, Cannabis cultivation, production, and manufacturing creates strong odors, can involve the use of significant amounts of energy and water, and requires security and other measures to reduce the risk of theft or other diversion to the illegal cannabis market, including possession and use by persons under the age of twenty-one; and

WHEREAS, the Act empowers the Town of Mesilla to adopt time, place and manner rules relating to cannabis use and operations so long as they are not inconsistent with the Act or the Dee Johnson Clean Indoor Air Act; and

WHEREAS, this ordinance is subject to change or amendment as the New Mexico Cannabis Regulation Act (“CRA”)’s rules and regulations are amended and adopted, and it shall comply with NMCRA and its regulations.

NOW THEREFORE, BE IT ORDAINED by the Governing body of the Town of Mesilla that:

SECTION 1. Purpose

This Ordinance is adopted to protect the health, safety, and welfare of the community. Except as allowed by NMCRA and its pertinent laws or regulations for personal or private use, the Town of Mesilla enacts reasonable regulations and requires compliance with the NMCRA and its pertinent laws or regulations.

SECTION 2.

1. Definitions

- a) “Adjacent grounds” means all areas that the licensee has an exclusive right to possess by virtue of his ownership or lease, which are outside the enclosed licensed premises, but adjacent and contiguous to the licensed premises, including but not limited to porches, patios, decks, entryways, lawns, parking lots, and similar areas and all fixed and portable things in those areas, including but not limited to lights, signs, speakers, and security devices.
- b) “Approve a business license” means to find that the requirements for a license have been met but does not give the applicant the right to operate a cannabis establishment in the Town until the license is issued. This standard applies even where the applicant has already obtained a State of New Mexico cannabis license.
- c) “Character and record” includes all aspects of a person’s character and record, including but not limited to moral character, criminal record, serious traffic offenses, record of previous sanctions against liquor licenses, gambling licenses, or cannabis licenses, which the person owned, in whole or in part, or in which the person served as a principal, manager, or employee; education, training, experience, civil judgments, truthfulness, honesty, and financial responsibility.
- d) “Cannabis” means all parts of the plant genus Cannabis containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds, or its resin; and does not include:
 - i. the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; or the sterilized seed of the plant that is incapable of germination; or

- ii. the weight of any other ingredient combined with cannabis products to prepare topical or oral administrations, food, drink, or another product.

For the purpose of this Ordinance, the term cannabis and medical cannabis are interchangeable.

- e) "cannabis consumption area" means an area where cannabis products may be served and consumed;
- f) "Cannabis courier" means a person that transports cannabis products to qualified patients, primary caregivers or reciprocal participants or directly to consumers.
- g) "Cannabis establishment" means:
 - a. A single retail location where the licensee may sell [marijuanacannabis](#) and [marijuanacannabis](#) infused products to consumers, including edibles. It includes both recreational and medical [marijuanacannabis](#).
 - b. An offsite manufacturing and production facility at which the licensee may manufacture and produce [marijuanacannabis](#) and [marijuanacannabis](#) infused products, which are not sold on location but are sold or transferred to consumers at other locations. It includes both recreational and medical [marijuanacannabis](#).
 - c. A cultivation facility at which the licensee may grow or cultivate [marijuanacannabis](#) and [marijuanacannabis](#) infused products, which are not sold on location but are sold or transferred to consumers at other locations. It includes both recreational and medical [marijuanacannabis](#).
 - d. A combined retail, production, and manufacturing location where the licensee may produce and manufacture [marijuanacannabis](#) and [marijuanacannabis](#) infused products, including edibles, and sell these products to consumers at the same location. It includes both recreational and medical [marijuanacannabis](#).
 - e. A combined retail, production, manufacturing, and cultivation/growing location, where the licensee may cultivate and grow [marijuanacannabis](#), produce and manufacture [marijuanacannabis](#), including [marijuanacannabis](#) infused products and edibles, and also sell these products to consumers at the same location. It includes both recreational and medical [marijuanacannabis](#).
- h) "Cannabis manufacturer" means a person that:
 - i. manufactures cannabis products.
 - ii. packages cannabis products.
 - iii. has cannabis products tested by a cannabis testing laboratory; or

- iv. purchases, acquires, sells, or transports wholesale cannabis products to other cannabis establishments
- i) “Cannabis producer” means a person that:
 - i. cultivates cannabis plants.
 - ii. has unprocessed cannabis products tested by a cannabis testing laboratory.
 - iii. transports unprocessed cannabis products only to other cannabis establishments; or
 - iv. sells cannabis products wholesale.
- j) “Cannabis producer microbusiness” means a cannabis producer at a single licensed premises that possesses no more than two hundred total mature cannabis plants at any one time.
- k) “Cannabis product” means a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients.
- l) “Cannabis research laboratory” means a facility that produces or possesses cannabis products and all parts of the plant genus Cannabis for the purpose of studying cannabis cultivation, characteristics or uses.
- m) “Cannabis retailer” means a person that sells cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers.
- n) “Cannabis testing laboratory” means a person that samples, collects, and tests cannabis products and transports cannabis products for the purpose of testing.
- o) “Complaint” means a document filed with the Town seeking sanctions against a cannabis business license.
- p) “Contiguous” means located within the same building as the cannabis establishment, located in a separate building on the same parcel of land as the cannabis establishment, or located in a separate building on a separate parcel of land that is adjacent to and shares at least fifty percent (50%) of a common lot line with the lot on which the cannabis establishment is located.
- q) “Daycare” means a facility required to be licensed by the State of New Mexico that provides care, services, and supervision for less than 24-hours a day to children.
- r) “Employee” means the licensee’s or proposed licensee’s employees.
- s) “Harm” or “harmful to public health, safety or welfare” means any matter that adversely affects the health, safety, or welfare of any person or group of persons within the Town or any adjacent community, including but not limited to matters related to crime, lighting, security, traffic, graffiti, litter, parking, and noise. A showing of actual harm shall not be required and

a showing of potential or threatened harm shall be sufficient. Any violation of any criminal statute or ordinance is per se substantially harmful to public health, safety, and welfare, without any showing of actual or threatened harm. The mere possession, advertising, sale, cultivation, processing, smoking, or ingestion of cannabis or cannabis infused products, when performed lawfully, shall not in itself be considered harmful to public health, safety, and welfare.

- t) “Integrated cannabis microbusiness” means a person that is authorized to conduct one or more of the following:
- i. production of cannabis at a single licensed premises, provided that the person shall not possess more than two hundred total mature cannabis plants at any one time.
 - ii. manufacture of cannabis products at a single licensed premises.
 - iii. sales and transportation of only cannabis products produced or manufactured by that person.
 - iv. operation of only one retail establishment; and
 - v. couriering of cannabis products to qualified patients, primary caregivers, or reciprocal participants or directly to consumers.
- u) “In public” means any area that the public may generally enter, including any business open to the public. The term includes the licensed premises and the adjacent grounds if the cannabis establishment has not also obtained a consumption license from the State of New Mexico. The term includes persons in motor vehicles located in a public place. It also includes property owned or leased by the Town, State or Federal government.
- v) “Issue a business license” means to finalize the Town’s local license after a previous approval of the license and may or may not occur after approval of the license, depending on any completions, inspections, approvals, or conditions that the Town may require to be satisfied before issuance. Issuance gives the licensee the ability to operate a cannabis facility, provided that the licensee also obtains a valid State of New Mexico license.
- w) “License” under this Ordinance means a local business license issued by the Town of Mesilla for the sale, production, manufacturing, cultivation, or distribution of cannabis or cannabis infused products.
- x) “Licensee” means the person or entity holding a local Town cannabis business license under this Article.

- y) “Licensed premises” means the area inside a building in which the cultivation, manufacture, processing, infusion, possession, weighing, display, packaging, sale, and exchange of cannabis and cannabis infused products is licensed under this Ordinance.
 - z) “School” means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes private and/or charter schools.
 - aa) “Vertically integrated cannabis establishment” means a person that is authorized to act as any of the following:
 - i. a cannabis courier.
 - ii. a cannabis manufacturer.
 - iii. a cannabis producer; and
 - iv. a cannabis retailer.
 - bb) “Operate” or “operation” means the matters described in this Ordinance, as amended.
 - cc) “Person” means any natural person and any entity.
 - dd) “Principal” means:
 - a. In the case of any entity, including any general or limited partnership, corporation, limited liability company, or other entity: any person who has a five percent (5%) or greater interest in the ownership of the entity, and any person who has the day-to-day authority to or actually does manage the entity’s finances.
 - b. In the case of a corporation: the persons described as a representative or applicant for any entity and the president, vice president, secretary, chief executive officer, chief financial officer, and any person who holds five percent (5%) or more of the capital stock of the corporation.
 - c. In the case of a limited liability company: the persons described as a representative or applicant for any entity and any member of the limited liability company.
 - d. In the case of a sole proprietorship, the individual owner.
 - ee) “Public property” means property that is occupied, owned, controlled, or operated by the Federal, State, or Town government.
- 2) General Requirements:**
- a) It shall be unlawful to use, sell, manufacture, cultivate, produce, or distribute cannabis on public property within the Town of Mesilla.

- b) Cannabis establishments shall not allow a person to consume cannabis on site, or on adjacent grounds, except as where authorized by the New Mexico Cannabis Regulation Act, as amended, including obtaining a consumption license.
- c) Cannabis establishments shall provide for proper and secure disposal of all cannabis products and byproducts and shall abide by the Town's regulations regarding rubbish and discharges into the municipal wastewater system.
- d) Cannabis establishments shall not emit fumes, dust, odors, or vapors into the environment or disturb adjacent uses.
- ~~d)~~e) Cannabis establishments shall not display or keep visible from outside the licensed establishment any cannabis products or paraphernalia.

3) Establishing Business Registration.

The Town of Mesilla, as the local cannabis business licensing authority, shall have the following powers and authority:

- a) To issue, deny, or revoke a Town cannabis business license and renewals of the same, and where necessary, to conduct public hearings related thereto.
- b) To impose any sanctions on a Town cannabis business license, including revocation, upon its own authority and initiation, or in response to a complaint by any person for any violation by the licensee after investigation and a public hearing, at which the licensee shall be afforded an opportunity to be heard. Such hearings will allow for the presentation of evidence by the applicant and Town staff and will be followed by the adoption of formal findings and conclusions.
- c) To adopt application forms, fees, and submission requirements for a Town cannabis business license.
- d) No person or corporate entity may operate a cannabis establishment within the Town without first obtaining a Town cannabis business license. It is illegal to operate a cannabis establishment in the Town without first obtaining a local Town cannabis business license.
- ~~d)~~e) All licenses will be administered and approved by the Town provided that the applicant has met all conditions and requirements established herein.
- ~~e)a)~~ It is illegal to operate a cannabis establishment in the Town without first obtaining a local Town cannabis business license.
- f) Upon issuance, the Town's cannabis business license shall be displayed within the premises and be visible to public view.

g) Registration shall be renewed by June 30 annually.

3)4) General Licensing Requirements.

To obtain a Town cannabis business license under this Ordinance, the applicant ~~must~~ shall demonstrate the following:

- a) The proposed licensed premises and adjacent grounds meet all requirements for issuance of a State of New Mexico cannabis license and all applicable laws and regulations.
- b) The applicant shows provisional proof of a valid State of New Mexico cannabis license.
- c) The applicant has met all requirements, including payment of any applicable taxes and fees, both state and local.
- d) The applicant has obtained a separate Town business license for any other business activity that will also be operated on the licensed premises and paid all applicable license fees.
- e) The premises and adjacent grounds are not licensed or operated as an establishment for the sale or service of alcohol beverages, or as a massage parlor, a dance hall, adult business, or an amusement facility.
- f) The applicant has applied for a Town cannabis business license on the established forms, that the Community Development Coordinator or designee has determined is complete.
- g) In the case of a retail cannabis establishment, the applicant has demonstrated that the proposed licensed premises is located on or within property zoned or used as Historical Commercial (HC) Zone (MTC 18.35) or General Commercial (GC) Zone (MTC 18.45). A combined retail and production, manufacturing or growing establishment is not allowed in these zones.
- h) In the case of a cannabis establishment that is manufacturing, producing, or cultivating for commercial use (non-personal use), and even where combined with a retail cannabis establishment, the applicant has demonstrated that the proposed licensed premises is located on or within property zoned or used as Rural Farm (RF) Zone (MTC 18.20) or Residential/Agricultural (RA) Zone (MTC 18.25) or Single-Family Residential (R-1) Zone (MTC 18.30), or as

Commented [CH1]: Do we want to include gun sales here?

otherwise specified in the Town's land use and zoning regulations, including those uses subject to a special use permit.

- i) In the case of a cannabis establishment that is manufacturing, producing, or cultivating, and even where combined with a retail cannabis establishment, the applicant shows adequate water resources and applicable permits, as approved by the Town, or as required under the laws of the State of New Mexico.
- j) The applicant must demonstrate that the location of the proposed licensed premises is no less than five hundred (500) feet from any other licensed cannabis establishment. Measurements shall be made from any wall of the two (2) proposed or existing licensed premises. Nothing herein prohibits multiple licenses from operating from a single premise.
- ~~k)~~ k) If applying for consumption licensing, the applicant must demonstrate that the cannabis consumption area is more than 300 feet of a Residential zone district.
- ~~k)l)~~ l) Alcohol consumption in a cannabis consumption area is prohibited as per State Law.
- ~~l)m)~~ m) The applicant must demonstrate that the proposed licensed premises are not located within three hundred (300) feet of any public or private school or other daycare facility. The distances referred to in this paragraph are to be computed by direct measurement from the nearest property line of the land used for a school or campus, to the nearest portion of the lot that is the situs of the building that is proposed for a licensed premises.
- ~~m)n)~~ n) The applicant agrees to only sell cannabis products and receive deliveries between the hours of 8:00 a.m. and 12:00 a.m. Monday through Saturday and 12:00 p.m. to 12:00 a.m. on Sundays.
- ~~n)o)~~ o) The applicant for a Town cannabis business License, principals, registered manager, and employees must meet all requirements under New Mexico State law.
- ~~o)p)~~ p) The applicant, principals, registered manager, and employees must be at least twenty-one (21) years of age.
- q) The applicant, principals, registered manager, and employees all hold valid occupational licenses and registrations as required by the State of New Mexico, including all applicable cannabis licenses.

Commented [CH2]: Similar to Liquor Serving Hours

4)5) Allowable land use zoning:

- a)a. Historic Residential (HR) Zone (MTC 18.35) and Single Family Residential (R-1) zone (MTC 18.30): Private property consumption, and cultivation of up to 6 mature and 6 immature plants per household.
- b)b. Single Family Residential (R-1) Zone (MTC 18.30) (If ancillary to the single-family home): Microbusiness.
- c)c. Residential Agricultural (RA) Zone (MTC 18.25) and Rural Farm (RF) zone (MTC 18.20): allows for cultivation, Cannabis testing Laboratory, Cannabis producer, Cannabis testing laboratory, vertically integrated cannabis establishment, Cannabis training and education.
- d)d. General Commercial (C) Zone (MTC 18.45) and Historic Commercial (HC) Zones (MTC 18.35): Cannabis retail. Cannabis manufacturer - Safe and secure extraction only allowed in this zone. Cannabis Consumption area with a special use permit only.

~~Cannabis Consumption area with a special use permit only.~~

5)6) Specific Requirements Regarding the Premises.

- a)a. The proposed licensed premises are in a fixed, permanent, non-portable building and are not located in a movable or mobile structure or in a vehicle, nor is it operated as a home occupation under Town regulations.
- b)b. The size of the premises is compatible and compliant with the applicable zoning district limitations regarding square footage for that zone.
- c)c. The applicant must have sole legal control of the proposed licensed premises at the time the application is submitted, under a lease that is presently in effect or through present ownership of the proposed licensed premises as shown by a deed or other instrument of record. The applicant must show proof that the lessor has agreed to use of the premises as a cannabis establishment.
- d)d. All storage, dispensing, manufacture, production, and cultivation activities shall be conducted indoors in a building meeting the requirements of Subsection (a).
- e)e. Plants, products, accessories, and associated paraphernalia shall not be visible from a public sidewalk or right-of-way.
- f)f. Sign regulations ~~are and~~ governed by the zone of which the license shall be issued.
- g)g. The proposed licensed premises have a suitable limited access area where the cultivation, display, storage, processing, weighing, handling, and packaging of cannabis and cannabis infused products occurs, which is posted “employees only,” and is separated from the areas

accessible to the public by a wall, counter, or some other substantial barrier designed to keep the public from entering the area.

~~h)~~ h. The applicant has submitted a security plan for the proposed licensed premises, which has been inspected and approved by the Town's ~~Marshal Department or Building~~ designated Official, and showing at least the following minimum-security measures:

- i. All doors, windows and other points of entry have secured and functioning locks.
- ii. A locking safe or enclosed secured storage located inside the proposed licensed premises in which any cannabis and cannabis infused products will be secured when the licensed premises are not open to the public.
- iii. If the licensed premises are connected by any passage or entryway to any other premises, there is a door between the two (2) premises that can be locked from the licensee side and cannot be opened from the other side.
- iv. A professionally monitored burglar alarm system that detects unauthorized entry of all doors, windows, and other points of entry to the proposed licensed premises; and
- v. Windows facing the adjacent grounds and lighting of the adjacent grounds sufficient to ensure that customers entering and leaving the licensed premises, entering, and exiting parked cars on the adjacent grounds, and walking across the adjacent grounds can be observed by employees from inside the licensed premises.
- vi. All licensing requirements established by the State of New Mexico.

~~i)~~ i. The proposed licensed premises and adjacent grounds comply with all zoning, health, building, plumbing, mechanical, fire, and other codes, statutes, and ordinances, as shown by completed inspections and approvals from the ~~Town's Building Official and~~ Town's Fire Marshal-designated official

~~j)~~ j. There is sufficient parking available on the proposed adjacent grounds given the size of the licensed premises and the number of employees and customers that can reasonably be expected to be present at any given time, pursuant to applicable provisions of the Town of Mesilla.

~~k)~~ k. The proposed licensed premises and adjacent grounds of the licensed premises will be operated in a manner that does not cause any substantial harm to public health, safety, and welfare.

~~l)~~ l. The proposed licensed premises are equipped with a ventilation system with carbon filters sufficient in type and capacity to eliminate cannabis odors emanating from the interior to

the exterior discernible by a reasonable person, including to any public property or right-of-way within the Town. The ventilation system must be inspected and approved by the Town ~~Building Official's~~ designated official. Refer back to (I) Mechanical Code compliance.

- ~~m)m.~~ The proposed licensed premises are located in a building that does not share any doors, windows, air passages, vents, ducts or any heating, ventilation, air conditioning, or air handling equipment or structures with any other building or premises whatsoever.
- ~~n)n.~~ Walls, barriers, locks, signs, and other means are in place to prevent the public from entering the area of the proposed licensed premises utilized for cultivation or production and manufacturing. The Town provides an exception for the perimeter fencing/wall requirements if the fencing materials are required by State Law for the production, manufacturing and cultivation of cannabis in the following zones: Rural Farm (RF) Zone (MTC 18.20) or Residential/Agricultural (RA) Zone (MTC 18.25) or Single-Family Residential (R-1) Zone (MTC 18.30).
- ~~o)o.~~ Customer visits and deliveries are prohibited between 12:00 a.m. and 8:00 a.m. for any Cannabis Cultivation Facilities, Cannabis Producers, Cannabis-derived products facilities, located within 300 feet of a Residential zone district.
- ~~p)p.~~ The proposed licensed premises must ensure that the ventilation system, air filtration, building screening requirements, necessary security apparatus and lighting are all compatible with neighboring businesses and adjacent uses.
- ~~q)q.~~ Every licensee and its principals, registered manager, and employees have a continuing duty to ensure that the requirements of this Section continue to be met after the license is issued and at all times that the license remains in effect.
- ~~r)r.~~ The licensee abides by all Town ordinances regarding signage, land use and zoning, water service, and wastewater discharge.
- ~~s)s.~~ Commercial on-site cannabis consumption is prohibited in all zones until regulations promulgated by the State become effective, in which cases all other Town provisions regarding on-site consumption not prohibited by state regulation will be effective.
 - i. Commercial on-site consumption of cannabis is the commercial cannabis activity ingesting of cannabis or cannabis products in a licensed cannabis consumption area. Commercial on-site consumption is considered part of Cannabis Relief. Unless license pursuant to the Lynn and Erin compassionate use act, access to the cannabis consumption area is restricted to persons 21 years of age and older.

- ii. Commercial on-site consumption of cannabis will not be permitted.

67) Delivery permit restrictions.

The following restrictions shall be placed on cannabis delivery permits:

Only medical or retail cannabis transporters ~~who qualify as a social equity applicant as defined in and by the National Cannabis Industry Membership~~ who holds a valid license and a delivery permit issued may deliver regulated cannabis to private residences of customers and patients, subject to the provisions the NMRCa and its pertinent regulations and rules.

78) Changes to License.

No licensee shall make any of the following major changes without first obtaining the written approval of the Town:

- a) Any transfer of the license or any ownership interest in the licensee entity or license.
- b) Any change in location of the licensed premises.
- c) Any change in the licensee's principals.
- d) Any change in the structure, walls, doors, windows, ventilation, plumbing, electrical supply, floor plan, footprint, elevation, operation, operational plan, patios, decks, safe or vault, locks, surveillance system, doors, window coverings, or security system at the licensed premises.
- e) Any material changes to the adjacent grounds, including but not limited to lighting, parking, and traffic flow.

89) Cultivation and Growing for Personal Use.

Individuals may possess, cultivate, and grow cannabis in their residence, including in a residential zoning district, but only for their personal use and subject to the following limitations as established under the New Mexico Cannabis Regulation Act, as amended:

- a) An individual must be at least twenty-one (21) years of age.
- b) It is unlawful to grow, cultivate, or process more than the designated number of cannabis plants per person, and per residence set forth in the New Mexico Cannabis Regulation Act, as amended, and any other applicable laws of the State of New Mexico.
- c) A residence shall not emit cannabis odors of any kind.
- d) Any growing or cultivation of cannabis products for personal use shall not be visible to the public.

- e) Any growing, cultivation or production of cannabis or cannabis infused products for personal use shall not be sold or transferred to third parties for future sale.
- f) No cannabis sale, production, distribution, manufacturing or cultivation shall be allowed in the Historic residential zone district, except for personal use and as specifically set forth herein.

~~9~~10) Establishment of New Fees.

- ~~a~~a. Planning and Building Cannabis application/inspection fee \$500.00
- ~~b~~b. Planning and Building records management fee \$100.00
- ~~c~~c. Planning and building site inspection fee \$500.00
- ~~d~~d. For Cultivation cottage or nursery initial Planning and Building /inspection fee \$800.00
- ~~e~~e. Cannabis Transporter/Courier Permit fee \$250
- ~~f~~f. A cannabis waste plan review fee \$50

~~10~~11) Renewal annual application fee for all cultivation permit types

- a) Planning and Building cannabis application/inspection fee \$500.00
- b) Planning and Building records management fee \$100.00
- c) Planning and Building site inspection (not charged unless required as part of a change as outlined in Section 8d and 8e).

~~11~~12) Renewal annual application fee for all other permit types

- a) Planning and Building cannabis application/inspection fee \$500.00
- b) Planning and Building records Management fee \$100.00
- c) Town issued Business License \$35.00
- d) Cannabis Transporter/Courier Permit \$250

Licensee shall ensure that all licensed premises are in compliance with Construction Industries Licensing Act and comply with the Occupational Health and Safety Act.

~~12~~13) Revocation of License.

- a) Any person in violation of a local Town cannabis license as set forth herein is subject to revocation for violations of this Ordinance, other Town ordinances, or New Mexico State or Federal laws.
- b) If the Town finds that there is probable cause that a violation has occurred, it shall immediately investigate the alleged violation.
- c) Upon evidence of a violation, the Town shall notify the licensee in writing of the specific allegations and the date of hearing scheduled for the Town Trustees to consider the revocation or any other appropriate action involving the license.

- d) During the license revocation hearing, the Town Trustees will hear evidence from Town staff and the licensee. Each party will be given an opportunity to be heard, to present witnesses, to cross examine witnesses, and to present evidence and exhibits in support of his or her case. At the conclusion of the hearing, the Town Trustees will make formal findings as to the reasons for revoking the license or allowing it to remain in place with conditions.
- e) If a cannabis license issued under this Ordinance is revoked, the licensee must cease doing business immediately, or as prescribed by the Town.

~~13~~**14) Enforcement.** The provisions of this Ordinance shall be enforced by the Town's Code Enforcement Officer, or a law enforcement officer tasked with enforcing the Town's Code.

~~14~~**15) Penalties.** Any violation of this Ordinance may be enforced in any court of competent jurisdiction. The maximum penalty per violation of this Ordinance, unless otherwise indicated, shall be up to \$500 and/or up to 90 days in jail. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent the Town from seeking injunctive relief, if appropriate

SECTION 2. Repealer

All ordinances or resolutions, or part therefore, inconsistent with this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution.

SECTION 3. Effective Date

This ordinance shall be in full force and effect, five (5) days after this approval, adoption and publication as provided by law.

PASSED, ADOPTED AND APPROVED this [MONTH] [DAY], [YEAR].

Nora L. Barraza
Mayor
Town of Mesilla

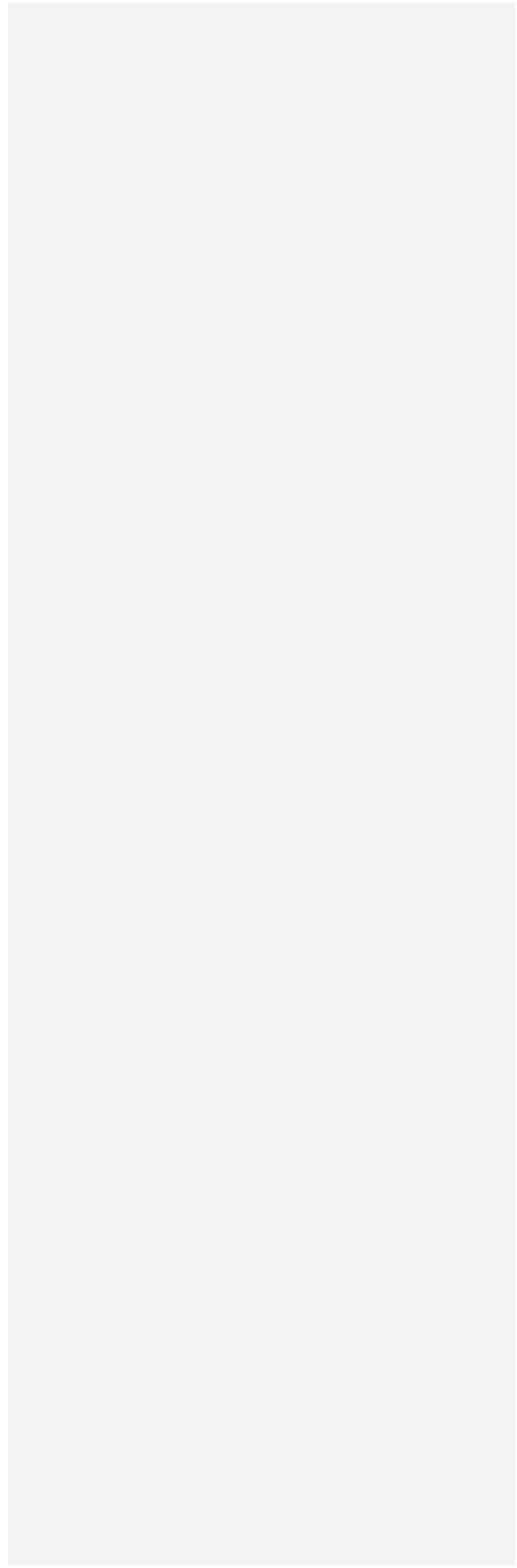
ATTEST:

By: _____
Cynthia Stoehner-Hernandez

Clerk/Treasurer
Town of Mesilla

(seal)

DRAFT





Town of Mesilla, New Mexico

**BOARD OF TRUSTEES
TOWN OF MESILLA
REGULAR MEETING
TUESDAY, OCTOBER 12, 2021
6:00 P.M.**

****FOR THE HEALTH & SAFETY OF ALL PUBLIC, MASKS ARE REQUIRED TO ENTER****

TRUSTEES: Nora Barraza, Mayor
Stephanie Johnson-Burick, Mayor Pro Tem (ABSENT)
Carlos Arzabal, Trustee
Jesus Caro, Trustee
Veronica Garcia, Trustee

STAFF: Kevin Hoban, Fire Chief
Enrique Salas, Marshal
Gloria Maya, Recorder

PUBLIC:

1. PLEDGE OF ALLEGIANCE

Mayor Barraza led the Pledge of Allegiance.

2. ROLL CALL & DETERMINATION OF A QUORUM

Roll Call.

Present: Mayor Barraza, Trustee Arzabal, Trustee Caro, Trustee Garcia

3. CHANGES TO THE AGENDA & APPROVAL

Motion: To approve agenda, Moved by Trustee Arzabal, Seconded by Trustee Garcia.

Roll Call Vote: Motion passed (summary: Yes =3).

Trustee Arzabal Yes

Trustee Caro Yes

Trustee Garcia Yes

4. PUBLIC INPUT – The public is invited to address the Board for up to 3 minutes.

Space is limited and may require persons giving public input IN PERSON to rotate if capacity of the room is exceeded.

No Public Input

1 **5. APPROVAL OF CONSENT AGENDA:** (The Board will be asked to approve by one motion the
2 following items of recurring or routine business. The Consent Agenda is marked with an asterisk *)

3 Trustee Arzabal requested moving New Business item 6a on the consent agenda.

4 **Motion: To approve consent agenda as amended, Moved by Trustee Arzabal, Seconded by Trustee**
5 **Garcia.**

6
7 **Roll Call Vote:** Motion passed (summary: Yes =3).

8 Trustee Arzabal Yes

9 Trustee Caro Yes

10 Trustee Garcia Yes

- 11
12 a) ***BOT MINUTES** – Minutes of a regular meeting September 27, 2021. *Approved by consent*
13 *agenda*
14 b) ***PZHAC Case # 061282** – 2280 Calle de Principal, submitted by R Builders, Inc for the
15 Basilica de San Albino to construct walls enclosing property behind the gift shop to include
16 grading/leveling and prepping of foundations for columbaria. **Zoned: Historic**
17 **Commercial (HC).** *Approved by consent agenda*
18 c) ***PZHAC Case #061284** – 1705 Tierra de Mesilla, a sign permit submitted by Cesar Huizar
19 to be placed on his fence at the corner of Avenida de Mesilla and Tierra de Mesilla. **Zoned:**
20 **Commercial (C).** *Approved by consent agenda*
21

22
23 **6. NEW BUSINESS:**

- 24 a) **Resolution 2021-30:** a resolution authorizing the participation in Transportation Project Funds
25 (TPF) administered by the New Mexico Department of Transportation in the amount of
26 \$368,918.14 for Calle de Picacho drainage improvements. – **Rod McGillivray, Public Works**
27 **Director.** *Approved by consent agenda*
28

- 29 b) Update on the Cannabis Ordinance Development.

30 Mayor Barraza stated that Ms. Stoechner-Hernandez forwarded a rough draft to the committee for review and
31 comments. She will schedule a meeting with the PZHAC and the Board of Trustees for further discussion.

32
33 **7. BOARD OF TRUSTEE COMMITTEE REPORTS**

34 Mayor Barraza: MPO meeting Wednesday, October 13th at 1:00 p.m. – CLC; CEO Board meeting Thursday,
35 October 14th at 10:00 a.m.

36
37
38 **8. BOARD OF TRUSTEE/STAFF COMMENTS**

39 Marshal Salas stated 73 students participated in the Walk to School Day. The new vehicles have the decals
40 and are ready for patrol.

41
42 Ms. Maya stated Early Voting will begin on Saturday, October 16th.

43
44 Mayor Barraza held a Moment of Silence for Mrs. Saenz.

45
46
47 **9. ADJOURNMENT**

48 **The Town of Mesilla Trustees unanimously agreed to adjourn the meeting. (Summary: Yes-4).**

49
50 **MEETING ADJOURNED AT 6:12 P.M.**

51
52 **APPROVED THIS 25th DAY OF OCTOBER, 2021.**
53

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Nora L. Barraza
Mayor

ATTEST:

Cynthia Stoeher-Hernandez
Town Clerk/Treasurer

draft

The applicant proposes to install concrete and flagstone along his utility easement along Parian/Oeste due to erosion. The applicant also proposes to remove the wrought iron and replace it with rock.

The PZHAC heard this case on October 18th. It passed with a 5-0 vote in favor.

TOWN OF MESILLA
ZONING APPROVAL

OFFICIAL USE ONLY:
Case # 261298
Fee \$ 106.50

90.⁰⁰
16.⁵⁰

PERMISSION TO CONDUCT WORK
OR
OBTAIN A COMMERCIAL/RESIDENTIAL BUILDING PERMIT FROM CID

2231 Avenida de Mesilla, P.O. Box 10, Mesilla, NM 88046 (575) 524-3262 ext. 104

CASE NO. _____ ZONE: HR CODE: _____ APPLICATION DATE: 10/7/21

WILLIAM MCILVAINE 310 990 9596
Name of Property Owner Property Owner's Telephone Number

PO BOX 360 MESILLA NM 88046
Property Owner's Mailing Address City State Zip Code

WBMCLVAINE@MAC.COM
Property Owner's E-mail Address

GONZALEZ LANDSCAPING
Contractor's Name & Address (If none, indicate Self)

575 382 7272 367631
Contractor's Telephone Number Contractor's Tax ID Number Contractor's License Number

Address of Proposed Work: 2687 CALLE DE PARIAN

Description of Proposed Work: REMOVE EXISTING DAMAGED CONCRETE, OUTSIDE WALL

SMOOTH & GRADE CORNER, INSTALL ROCKS IN LINE OF SIGHT

TRIANGLE. REMOVE 2 IRON FENCE SECTIONS. INSTALL ROCK TO HEIGHT OF

\$ 7500.00 Wfmcilva 05 OCT 2021
Estimated Cost Signature of Applicant Date

Signature of property owner: Wfmcilva

With the exception of administrative approvals, all permit requests must undergo a review process from staff, PZHAC and/or BOT before issuance of a zoning permit. **Plan sheets are to be no larger than 11 x 17 inches or shall be submitted electronically.**

FOR OFFICIAL USE ONLY

PZHAC Administrative Approval BOT Approved Date: _____
 Approved Date: _____ Disapproved Date: _____
 Disapproved Date: _____ Approved with Conditions
 Approved with conditions

PZHAC APPROVAL REQUIRED: ___ YES ___ NO BOT APPROVAL REQUIRED: ___ YES ___ NO

CID PERMIT/INSPECTION REQUIRED: ___ YES ___ NO ___ SEE CONDITIONS

CONDITIONS: _____

PERMISSION ISSUED/DENIED BY: _____ ISSUE DATE: _____

- THIS APPLICATION SHALL INCLUDE ALL OF THE FOLLOWING:
1. _____ Plot plan with legal description to show existing structures, adjoining streets, driveway(s), improvements & setbacks. Verification shall show that the lot was LEGALLY subdivided through the Town of Mesilla or that the lot has been in existence prior to February 1972.
 2. _____ Site Plan with dimensions and details.
 3. _____ Foundation plan with details.
 4. _____ Floor plan showing rooms, their uses and dimensions.
 5. _____ Cross section of walls
 6. _____ Roof and floor framing plan
 8. _____ Proof of legal access to the property.
 9. _____ Drainage plan.
 10. _____ Details of architectural style and color scheme (checklist included for Historical zones) – diagrams and elevations.
 11. _____ Proof of sewer service or a copy of septic tank permit; proof of water service (well permit or statement from the Public Utility providing water services).
 12. _____ Proof of legal access to the property.
 13. _____ Other information as necessary or required by the City Code or Community Development Department (See other side.)



RESOLUTION NO. 2021-31

A RESOLUTION BY THE BOARD OF TRUSTEES APPROVING A JOINT POWERS AGREEMENT BETWEEN THE TOWN OF MESILLA, THE CITY OF LAS CRUCES, AND DONA ANA COUNTY FOR THE GOVERNANCE OF THE MESILLA VALLEY METROPOLITAN PLANNING ORGANIZATION

WHEREAS, the Mesilla Valley Metropolitan Planning Organization (MPO) was established in 1982 under the name Las Cruces Metropolitan Planning Organization; and

WHEREAS, that the MPO has been operating under the current Joint Powers Agreement (JPA) between the Town of Mesilla (Town), the City of Las Cruces (City), and Doña Ana County (County) since 2013; and

WHEREAS, the Federal Highway Administration (FHWA) and the New Mexico Department of Transportation (NMDOT) notified the MPO of their requirement that the MPO update and revise the JPA; and

WHEREAS, the revised JPA addresses the State concerns regarding regular reviews of the JPA; and

WHEREAS, the revised JPA addresses the Federal concerns regarding establishing a conflict resolution protocol between the member entities of the MPO; and

WHEREAS, the revised JPA contains other changes from the current JPA that the MPO Policy Committee deems necessary.

NOW THEREFORE, BE IT RESOLVED that the Board of Trustees does hereby approve the Mesilla Valley Metropolitan Planning Organization Joint Powers Agreement as included within this document.

PASSED, ADOPTED AND APPROVED on this 25 day of October 2021.

Nora L. Barraza
Mayor



ATTEST:

Cynthia Stoechner-Hernandez
Town Clerk-Treasurer

Roll Call Vote:

Mayor Barraza _____
Trustee Johnson-Burick _____
Trustee Arzabal _____
Trustee Caro _____
Trustee Garcia _____

**Joint Powers Agreement
Between the City of Las Cruces, Doña Ana County, and the Town of Mesilla
For the Governance of the Mesilla Valley Metropolitan Planning Organization**

This **Joint Powers Agreement** is entered into on this ____ day of _____, 2021, by and between the **City of Las Cruces**, a municipal corporation, hereinafter referred to as “**the City**”, the **County of Doña Ana**, a political subdivision, hereinafter referred to as “**the County**”, and the **Town of Mesilla**, a municipal corporation, hereinafter referred to as “**the Town**”, all established entities in the State of New Mexico. This agreement amends and replaces the previous Joint Powers Agreement between the City, County, and Town dated July 1, 2013 under which the **Mesilla Valley Metropolitan Planning Organization**, hereinafter referred to as “**MPO**”, has been operating under until the effective date listed above.

WITNESSETH:

WHEREAS, the Metropolitan Planning Organization (MPO) was designated by the Governor of the State of New Mexico through declaration on February 10, 1982; and

WHEREAS, the parties hereto agree that it is in the best interests of the City, the County, and the Town to maintain and continue a Metropolitan Planning Organization in order to conduct coordinated, continuing, and comprehensive transportation planning; and

WHEREAS, the MPO shall be constituted for the purpose of establishing, overseeing, and directing transportation policy and to accomplish general transportation planning for the City, the County, and the Town within the Metropolitan Planning Area; and

WHEREAS, pursuant to the Joint Powers Agreement Act, NMSA 1978, Sections 11-1-1 through 11-1-7, the City, the County, and the Town are explicitly authorized to enter into a Joint Powers Agreement, hereinafter referred to as “**JPA**”, to establish and govern a separate agency to possess and exercise common powers of the parties; and

NOW, THEREFORE, in consideration of the mutual benefits that will accrue to the City, the County, and the Town, and the citizens thereof, the parties hereby agree as follows:

(I)

THAT, this Joint Powers Agreement shall supersede and replace the previous Joint Powers Agreement dated July 1, 2013; and

(II)

THAT, the MPO will carry out the purpose and all duties specified in 23 CFR §450.300 and 49 U.S.C. §5303.

I. ACRONYMS AND DEFINITIONS

Cooperation means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective.

CFR – Code of Federal Regulations.

Federal Highway Administration (FHWA) – A division of the USDOT created in 1967 and authorized under Title 23 of U.S.C. to administer programs involving Federal-Aid, Federal Lands, research and development, international outreach, and National Highway Institute programs.

Federal Transit Administration (FTA) – A division of the USDOT created in 1991 and authorized under Title 49 of U.S. Code to administer programs to provide financial assistance to develop new transit systems and improve, maintain, and operate existing systems.

Metropolitan Planning Area (MPA) – The geographic area determined by agreement between the MPO and the Governor, in which the metropolitan planning process is carried out.

Metropolitan Planning Organization (MPO) – Created under 23 U.S.C. §134 for the purpose of transportation planning in metropolitan planning areas above 50,000 in population.

New Mexico Department of Transportation – the New Mexico Department of Transportation, an agency of the Executive Branch of the State of New Mexico Government.

Policy Board is the recognized authority of the MPO and is governed by its adopted bylaws.

United States Department of Transportation (USDOT) – The federal Department of Transportation, an agency of the Executive Branch of the United States Government.

U.S.C. – United States Code.

II. ORGANIZATION

- A. The MPO shall consist of ten (10) voting members known as the Mesilla Valley MPO Policy Board:
 1. Three (3) elected officials representing the City of Las Cruces.
 2. Three (3) elected officials representing Doña Ana County.
 3. Three (3) elected officials representing the Town of Mesilla.
 4. The District Engineer from the New Mexico Department of Transportation District One.
 5. Each of the representatives from the City, the County, the Town, and NMDOT shall be entitled to one (1) vote.
 6. Per Mesilla Valley MPO Resolution 13-10, all sitting members of the New Mexico State Legislature who have constituents residing within the Mesilla Valley MPO MPA are ex-officio (non-voting) members of the Policy Board.
 7. In addition, representatives of the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and other appropriate ex-officio members may be established by resolution of the Policy Board.

8. The MPO Officer shall serve as an ex-officio member of the Policy Board in the role of Executive Secretary in addition to serving as staff for the MPO.
- B. The function of the MPO shall be as follows:
1. Serve as a forum for cooperative decision-making on transportation-related matters.
 2. Provide policy guidance and direction to the MPO Staff and advisory committees in accordance with the transportation planning process.
 3. Receive and act upon recommendations made to it by its established advisory committees.
 4. Receive and consider input to the transportation planning process from the citizens of the MPA.
 5. Determine the MPA boundaries in accordance with 23 U.S.C. §450.312.
 6. Establish and maintain advisory committees, as needed.
 7. Undertake such other activities as it may deem necessary and appropriate to carry out transportation planning for the MPA.
- C. Duties of the MPO Officer:
1. A distinct position of MPO Officer shall be created and maintained. The MPO Officer shall maintain official plans and records of the MPO, shall administer the daily operations of the MPO, have supervisory responsibility over the activities of the other members of MPO Staff, and prepare or oversee the preparation of necessary reports as required by federal regulations.
 2. The MPO Officer shall manage the budget and expenditures of the MPO planning funds as appropriated by the federal government and distributed by NMDOT in accordance with the Unified Planning Work Program (UPWP) as approved by the Policy Board. This shall include local match monies provided by the MPO member jurisdictions as well as any monies provided by the State of New Mexico or MPO member jurisdictions for MPO planning purposes beyond the match requirements.
 3. The MPO Officer shall be responsible for the development and update of the Metropolitan Transportation Plan (MTP), the Transportation Improvement Program (TIP), the Unified Planning Work Program (UPWP), the Public Participation Plan (PPP), the Title VI Plan, and the Annual Listing of Obligated Projects (ALOP) for review by advisory committees and approval by the Policy Board.
 4. The MPO Officer shall be responsible for reporting to the MPO Policy Board the findings of any NMDOT, FHWA, or FTA audits of the Mesilla Valley MPO and the MPO Officer shall be responsible for reporting the results of the annual Quality Assurance Review to the MPO Policy Board.

III. FINANCIAL CONTRIBUTIONS

The MPO shall receive federal transportation planning funds from the USDOT FHWA Section 112 funds and FTA Section 5303 funds, as administered and distributed by the NMDOT in accordance with an

established allocation formula. The financial contribution amounts required from the parties under this JPA shall be in addition to and above the planning formula funds currently provided by the NMDOT.

A. Contribution Amounts

1. The City, the County, and the Town shall contribute proportionally to the required local match for Section 112 Planning Funds based on their proportion of their population within the MPA. The population enumerated in the latest US Census shall be the population used.
2. The City shall contribute 100% of the required local match for Section 5303 funds.
3. The basis of the annual financial contribution by each party to this agreement will be tied to the decennial US Census for the Section 112 fund distribution. The City, the County, and the Town shall contribute Section 112 match moneys in proportion to their population within the Mesilla Valley MPO Planning Area. In the event that MPO operating funds need to exceed the grant amounts and local matching funds, the parties agree to maintain the same percentage splits as outlined above.

B. Budget Procedures

The City, the County, and the Town shall consider the budget prepared by the MPO Officer and shall notify the MPO Officer no later than April 30 if the entity has not included its share of the MPO budget in the preliminary budget submitted by that entity for the upcoming fiscal year. Not one of the following entities – the City, the County, or the Town shall refuse to include its share of the budget proposed by the MPO in its preliminary or final budgets if the proposed budget is equal to or less than the budget for the MPO for the previous fiscal year. Additionally, each governing body shall include its share of the proposed budget if all the governing bodies agree to so increase the MPO budget.

C. Local Match Contributions

The County and the Town shall pay their portion of the MPO budget in one payment due no later than December 31. The City will pay its portion of the MPO budget quarterly in four (4) equal payments due on October 1, January 1, April 1, and July 1 of each year in accordance with the Memorandum of Agreement with the NMDOT, whereby the City is the administrative, fiscal, and operating agent of the MPO.

D. Use of Excess Funds

As the UPWP is a biannual document, excess funds remaining at the end of the first fiscal year of a UPWP shall be rolled over for use during the next fiscal year. Excess funds remaining at the end of the second year of a UPWP are unable to be rolled over for use during the next fiscal year due to federal regulations.

IV. FISCAL AGENT

The City shall operate as the fiscal agent for the MPO in accordance with an approved Memorandum of Agreement (MOA). The duties of the fiscal agent shall be as follows:

A. Financial Operations

1. The fiscal agent shall bill and collect all revenues from the parties of this agreement for the MPO at the times and in the amounts as determined through the procedures in Article III herein.

2. The fiscal agent will maintain separate accounting designated specifically for the MPO revenue and operation accounts and related budgets.
3. The fiscal agent shall make all revenue or budget transfers and all disbursements for the MPO.
4. The fiscal agent will be responsible for preparing financial reports by the dates outlined in the NMDOT Planning Procedures Manual (PPM) for the required MPO Reimbursement Packets on a quarterly basis, which the MPO Officer will submit to NMDOT. The fiscal agent will be responsible for preparing any other financial reports on an as needed basis.
5. The fiscal agent shall strictly account for all receipts and disbursements made pursuant to this JPA, in accordance with the City of Las Cruces Procurement Code, and all other applicable laws and regulations. Additionally, the MPO Officer shall also maintain records of all receipts and disbursements.
6. The fiscal agent will provide procurement services for the MPO in accordance with the City of Las Cruces Procurement Code, consistent with New Mexico law.
7. The City of Las Cruces Legal Department shall serve as legal counsel for the MPO.

B. Personnel Administration

1. The Policy Board shall participate in the designation of the MPO Officer.
 - a. The MPO Policy Board shall take action to accept the appointment of an interim MPO Officer in the event of a vacancy of the position.
 - b. Each MPO member jurisdiction with voting privileges shall designate one of their representatives from the MPO Policy Board to serve on the interview panel to hire the MPO Officer.
 - c. City Staff at the direction of the City Manager, or designee, shall also participate in the interview panel to hire the MPO Officer.
 - d. The MPO Officer hiring process shall follow all applicable City of Las Cruces policies and procedures.
 - e. As the MPO Officer is an employee of the City, the Las Cruces City Manager retains ultimate authority to accept the recommendation of the interview panel and hire the MPO Officer.
 - f. The MPO Policy Board shall take action to designate the successful candidate as the new MPO Officer.
2. The Policy Board shall participate in the evaluation of the performance of the MPO Officer.
 - a. At the time of the annual evaluation, the City Manager, or designee supervising the MPO Officer, shall solicit input on the MPO Officer's performance from the members of the MPO Policy Board via a pre-agreed survey distributed to Policy Board members.
 - b. MPO Policy Board members will have the right to directly contact the City Manager, or designee supervising the MPO Officer, with any comments or concerns at any time during the year. This contact will be facilitated by the current MPO Chair.

- c. As the MPO Officer is an employee of the City, the Las Cruces City Manager retains ultimate authority to discipline or dismiss the MPO Officer.
3. All MPO employees will be employees of the City.
4. The City as fiscal agent will house all personnel files of MPO employees, and MPO Staff shall be responsible for providing updates to personnel documentation to the City to maintain said personnel files.
5. The City as fiscal agent will provide human resource services, including payroll, for MPO employees.
6. Benefits and all policy matters related to personnel shall be provided by and governed by the City as fiscal agent.

C. Compensation

The City may seek reimbursement for fiscal agent costs through the MOA.

V. NEW MEXICO TORT CLAIMS ACT

As between the parties hereto, each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred as a result of the other party's acts or omissions in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The MPO and its "public employees" as defined in the New Mexico Tort Claims Act, and the Department and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

VI. THIRD PARTY BENEFICIARY CLAUSE

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

VII. APPLICABLE LAW

The Laws of the State of New Mexico shall govern this Agreement.

VIII. SCOPE OF THE AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or

otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

IX. EFFECTIVE DATE, AMENDMENTS, AND TERM

This Agreement shall not be effective until approved by the Board of County Commissioners for Doña Ana County, the City Council for the City of Las Cruces, the Board of Trustees for the Town of Mesilla, and the Department of Finance and Administration of the State of New Mexico. This Agreement cannot be amended except in writing signed by the Parties to this JPA and approved by the Department of Finance and Administration.

The term of this Agreement shall extend from the first of the month following this adoption and this Agreement shall be perpetual unless terminated or amended as hereinafter provided.

This Agreement supersedes all previous Joint Powers Agreements or other agreements or parts of other agreements which establish parameters for the operation of the Mesilla Valley Metropolitan Planning Organization.

A. Termination

By mutual agreement, the parties hereto may terminate this Agreement by giving written notice at least ninety (90) days prior to the effective date of termination.

B. Modification

This agreement may be supplemented or renegotiated as necessary to meet changing conditions as recommended by the Policy Board, NMDOT, FHWA, or FTA.

A majority vote by the MPO Policy Board is sufficient to trigger an amendment review process by the MPO. Additionally, FHWA, FTA, or NMDOT may submit a formal written request with proposed amendments to the MPO Policy Board requesting an amendment review process. Amendments developed through the amendment review process must be approved by a three-fourths majority of the MPO Policy Board. If proposed amendments receive a three-fourths majority approval by the MPO Policy Board, those amendments must be forwarded to the MPO member jurisdictions for consideration.

C. Review

This Agreement shall be reviewed by the Policy Board upon the adoption of a new transportation authorization bill by Congress. At minimum, this Agreement will be reviewed by the Policy Board every five years if no transportation authorization bill is passed in that time. This review can consist of a majority vote approval by the Policy Board if the consensus of the Policy Board is that this agreement is functioning satisfactorily and effectively. At time of review the Policy Board may initiate an amendment review process upon a majority vote of the Board.

X. SEVERABILITY OF PROVISIONS

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby and such remainder would constitute the JPA and the MPO would continue to operate under the remaining provisions, unless the provision held invalid was such as to make the fulfillment of the purpose of this JPA impossible or impracticable.

XI. CONFLICT RESOLUTION

In the event of a disagreement between the parties with respect to the duties or processes of metropolitan transportation planning, it is agreed that the parties will work in good faith to resolve any disagreements at the lowest possible level. If a disagreement cannot be resolved at the lowest possible level, the hereinafter Conflict Resolution Hierarchy will be followed. If other agencies are involved, personnel from equivalent organizational levels will be included in the conflict resolution process.

Level 1 – Party to Party or Advisory Committees

The parties to the disagreement agree to discuss the issue(s) and attempt to resolve the disagreement. This resolution can take place either party to party or at the appropriate MPO advisory committee at their next scheduled meeting, whichever is deemed more effective to achieve a speedy resolution to the conflict.

Level 2 – Policy Board

The parties to the disagreement agree to elevate the issue(s) and attempt to resolve the disagreement at the next scheduled meeting of the MPO Policy Board.

Level 3 – Parties’ Governing Bodies

The parties to the disagreement agree to discuss the issue(s) between the affected parties’ governing bodies.

Level 4 – Mediation administered by FHWA or FTA

The parties to the disagreement agree to accept a mediation process administered by FHWA or FTA as appropriate.

THIS JOINT POWERS AGREEMENT was approved by the City Council of the City of Las Cruces on ____ , 2021.

THIS JOINT POWERS AGREEMENT was approved by the Board of Commissioners of Doña Ana County on ____ , 2021.

THIS JOINT POWERS AGREEMENT was approved by the Board of Trustees of the Town of Mesilla on ____ , 2021.

IN WITNESS WHEREOF, the Parties have hereunto affixed their signatures:

THE CITY OF LAS CRUCES, NEW MEXICO

By: _____
Mayor, City of Las Cruces

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

THE COUNTY OF DOÑA ANA, NEW MEXICO

By: _____
Chair, Board of County Commissioners

ATTEST:

County Clerk

APPROVED AS TO FORM:

County Attorney

THE TOWN OF MESILLA, NEW MEXICO

By: _____
Mayor, Town of Mesilla

ATTEST:

Town Clerk

APPROVED AS TO FORM:



Town Attorney

APPROVED:
THE STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION

Secretary

Chapter 5.20

SPECIAL EVENTS LICENSING

Sections:

5.20.010 Title.

5.20.020 Purpose.

5.20.030 Definitions.

5.20.040 Applicability.

5.20.050 Exemptions.

5.20.060 Requirements.

5.20.070 Fees.

5.20.080 Compliance with applicable laws.

5.20.090 Fines and actions.

5.20.100 Each day a separate offense.

5.20.010 Title.

This chapter may be cited as the “special events licensing ordinance.” [Ord. 2017-04 § 1]

5.20.020 Purpose.

The purpose of this chapter is to:

- A. Maintain the aesthetic and historic attractiveness of the town, including town rights-of-way and town property;
- B. Promote public safety and orderly movement of pedestrians and, where designated, drivers who use town rights-of-way and/or town property;
- C. Ensure that all businesses that operate within the town promote the town’s economic viability by generating or encouraging the generation of sales taxes that can be used to provide necessary services for the residents of the town;

- D. Ensure that all businesses in town are operating within the regulatory authority of the town;
- E. Reduce the potential for urban blight by encouraging the use of town facilities such as the plaza in a way that preserves the historic character of the town while generating income for the town; and
- F. Promote compliance with relevant building, fire, health and safety codes by those who wish to conduct business within the town. [Ord. 2017-04 § 1]

5.20.030 Definitions.

- A. Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.
- B. “Food” has its usual and ordinary meaning, and includes all items designed for human consumption, including, but not limited to, ice cream, candy, gum, popcorn, hot dogs, sandwiches, peanuts, meats, fish, soft drinks, coffee and dairy products.
- C. “Itinerant vendor” means a person, firm or corporation, whether as owner, agent, consignee, or employee, whether a resident of the town or not, who engages in a business of selling goods, wares, food, merchandise of any kind or description and who commonly conducts such business either (1) in or about a structure that is not permanently affixed to real property, or (2) by traveling from place to place, customer to customer, or client to client (as such terms are commonly known) for the purpose of conducting business with customers or clients located within the town. A person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with a local dealer, trader, merchant or auctioneer, or by conducting such temporary business in connection with, as part of, or in the name of a local dealer, trader, merchant or auctioneer.
- D. “Mobile vendor” means an itinerant business operator or vendor who conducts business from a vehicle or other conveyance upon public streets, sidewalks, alleys, or other public ways of the town, excluding fireworks vendors, carnivals, farmer’s markets, and public festival or fiesta vendors.
- E. “Public celebration” means any fiesta, festival, or any other kind of public celebration designated by the board of trustees, including the associated activities and businesses that might be authorized during such period.
- F. “Temporary site-specific vendor” means an itinerant vendor who conducts business (1) from a vehicle or other conveyance, or (2) in or about a structure that is not permanently affixed to real property, and that is located upon privately or publicly owned property, but not on a public street, sidewalk, alley or public way of the town.

G. "Special event" is defined as any temporary commercial or private indoor or outdoor event, such as, but not limited to, parades, runs, walks and other athletic events, fairs, shows, concerts, street festivals, celebrations, anniversaries or other events of a similar nature, not including town-sponsored events. [Ord. 2017-04 § 1]

5.20.040 Applicability.

It is presumed that all itinerant vendors and temporary site-specific vendors engaging in business within the geographical boundaries of the town of Mesilla, New Mexico, are subject to the provisions of this chapter unless exempt by state statute or other town of Mesilla regulations. [Ord. 2017-04 § 1]

5.20.050 Exemptions.

The following activities, businesses, and/or persons, as such are commonly known, shall be exempt from coverage of this chapter, but this exemption shall not be construed to limit or restrict the application of other laws and regulations pertaining to such activities, businesses and/or persons:

A. Newspaper couriers;

B. Lemonade stands or other similar stands operated by a minor making \$500.00 or less per year;

C. Stands used to sell or distribute flowers, fruit, vegetables, produce or plants grown on the property where the stand is located;

D. Delivery or distribution of food, goods or products ordered or purchased by customers from a source or point of sale other than a mobile vehicle operated for the purpose of soliciting customers while traveling or while located on town streets or property;

E. Delivery or distribution of food by or for any not-for-profit organization, governmental agency, or other charitable organization, including without limitation Meals on Wheels and the food bank; and

F. Mobile or itinerant vendors operating under a mercado, special use permit, or other permit issued by the town for a public celebration or special event. [Ord. 2017-04 § 1]

5.20.060 Requirements.

All itinerant and temporary vendors are responsible for complying with the following requirements:

A. The name or names and address of the applicant, vehicle license numbers of all vehicles from which the applicant proposes to conduct business; description of the general type of goods, wares, merchandise or food proposed to be sold by the applicant; and the place or places where the applicant proposes to engage in business shall be filed with the town.

B. Each application shall be accompanied with the applicable application, license, and other fees as established in this chapter, or as lawfully adjusted by the town, which fee schedule shall be on file with the town clerk.

C. Application submission deadline shall be 15 working days before the event and shall be reviewed by the following departments:

1. Office of the town clerk/treasurer;
2. Public works;
3. Fire department;
4. Community development; and
5. Marshal's department.

D. Operations for special events shall be limited from 9:00 p.m. to 1:00 a.m. from Thursday to Saturday, and from 8:00 p.m. to midnight on Sundays.

E. The number of private events at which itinerant vendors, including food trucks, will be allowed on private property is two per quarter, and shall be limited to three consecutive days.

F. All itinerant vendors shall be limited to commercial zones only.

G. Food trucks shall not be parked overnight on the property.

H. The number of itinerant vendors/food trucks shall be limited by the capacity of the parking area when all other requirements are taken into account, such as the total number of parking spaces required by the primary business on the property, along with the number of spaces leased to or shared with other users, and the number of spaces required by the vendor as well as any spaces that, for various reasons, cannot be used for parking. In any case, the maximum number of itinerant vendors/food trucks allowed to operate or remain at a time on a single property shall be limited to three.

I. All food vendors must comply with New Mexico Environment Department Food Service and Food Processing Regulations. An Environment Department Food Program food service permit must be obtained prior to approval of a vendor's license, along with an inspection and certification by the Mesilla fire marshal.

- J. All vendors shall be located on private property, and shall provide written authorization from the property owner that the vendor may be located on the property.
- K. Vendors' operations, associated structures, and signs shall not be attached to public property or placed in areas that obstruct or infringe on pedestrian or vehicular traffic, or the public view of other signage or rights-of-way.
- L. Vendors shall not occupy, obstruct, or infringe on any public right-of-way or clear sight triangle at the intersection of any public road or right-of-way while engaging in business.
- M. Any waste or packaging associated with the vendor's product or merchandise shall be disposed of by the property owner or the vendor. Serving and disposal areas shall have at least one trash receptacle.
- N. Site Plan. The plan shall include but shall not be limited to the following:
1. Name of vendor/property owner with dates and times of the event and contact information.
 2. Brief description of the event (i.e., concert, festival, car show, etc.).
 3. Shall be clear and legible and drawn to scale.
 4. The locations of all egress gates, barriers, fencing and barricades, if applicable.
 5. Locations of all stages, any tents or membrane structures, portable restrooms/public restrooms, booths, displays, cooking areas, lighting, trash receptacles, and seating areas, etc.
 6. All lighting shall be in compliance with the "night sky ordinance" (Chapter [18.50](#) MTC, Outdoor Lighting).
 7. Estimated attendance for the event.
 8. Electrical generators' locations or if using another electrical source (i.e., property owner electric via extension cord).
 9. Details of each cooking location identifying the method of cooking, locations of flammable gases or barbecue grills and extra storage tanks.
- O. Signs, in addition to menu boards on the truck itself, shall be limited to two signs (single-sided) or one two-sided sandwich board, and shall be located on site and must have a setback of at least five

feet from any property lines adjacent to a public road or right-of-way.

P. Noise Restrictions. The town of Mesilla may deny a special event permit or impose restrictions upon time, place, manner and degree of loudness of any noise amplification in order to prevent the following:

1. Undue annoyance to persons;
2. A public nuisance;
3. Interference with pedestrian and vehicular traffic;
4. Interference with schools, churches or other assemblies;
5. A disturbance of the peace; or
6. Because of excessive noise or an accumulation of noises that is a hazard to a person's health.

Q. Every vendor covered by this chapter shall at all times prominently display the vendor's license issued by the town of Mesilla.

R. Americans with Disabilities Act (ADA). The special event applicant shall be responsible for the event's compliance with applicable ADA requirements. [Ord. 2017-04 § 1]

5.20.070 Fees.

Itinerant and temporary vendors engaging in business in town shall pay to the town an annual license fee set by the state, renewable in March of each year, and an environmental fee of \$200.00 per day to cover the cost of services provided by the community development, public works, marshal, and fire departments generated by the stand. Other costs, including any costs of additional inspections or tests necessary to ensure safe operation, or requested by the applicant (including costs incurred by the town), shall be paid for by the applicant unless other arrangements between the applicant and the town have been made. [Ord. 2017-04 § 1]

5.20.080 Compliance with applicable laws.

Itinerant and temporary vendors shall comply with all applicable local, state, and federal laws and regulations. Additionally, all itinerant and temporary vendors shall ensure that all sales and monetary transactions that take place in town limits will be reported properly to the appropriate taxing authorities, and the town shall receive the appropriate gross receipts tax due as a result of any sales or monetary transactions that take place while operating in the town. (Failure to properly report

transactions or taxes while conducting business within town limits may result in a vendor's Mesilla business permit being temporarily or permanently revoked.) [Ord. 2017-04 § 1]

5.20.090 Fines and actions.

If the board of trustees determines by a majority vote that any of the above sections have been violated, then the violator's business license with the town may be revoked temporarily or permanently, and any person violating any provisions of this title, upon conviction, shall be punished by a fine of not more than \$500.00, or by imprisonment in the county jail for a term not exceeding 90 days, or by both fine and imprisonment. [Ord. 2017-04 § 1]

5.20.100 Each day a separate offense.

Each day during any portion of which any violation of this title is committed or continued by such person shall constitute a separate offense and shall be punishable as provided. [Ord. 2017-04 § 1]

The Mesilla Town Code is current through Ordinance 2020-05, passed September 28, 2020.

Disclaimer: The town clerk's office has the official version of the Mesilla Town Code. Users should contact the town clerk's office for ordinances passed subsequent to the ordinance cited above.

Town Website: <http://www.mesillanm.gov/>

Town Telephone: (575) 524-3262

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