

MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY WORK SESSION

Grant County Administration Center, 1400 Hwy 180, Silver City, NM

May 20, 2009 – 7:00 P.M.

Present: James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Thomas A. Nupp, District 2
Simon Wheaton-Smith, District 3
Steve May, District 4

Also Present: Alex C. Brown, Town Manager-Finance Director
Ann L. Mackie, Town Clerk
Robert L. Scavron, Town Attorney
Ed Reynolds, Chief of Police
Sherwood Nance, Animal Control Officer
Roger Groves, Code Enforcement Supervisor

CALL TO ORDER/PLEDGE OF ALLEGIANCE – Mayor Marshall called the meeting to order at 7:00 p.m.

DISCUSSION – NOTICE OF INTENT TO ADOPT ORDINANCE NO. 1153: ANIMAL CARE AND CONTROL. Mayor Marshall stated the Council would not take action on the ordinance at the meeting, but did want to hear the pros and cons of the ordinance to help guide the future of the topic. He gave the floor over to Councilor Nupp, sponsor of the ordinance, who commented that references to animal ordinances had been made ever since the Town had incorporated in 1878 and how animals had always been a part of the culture in Silver City. He stated the most recent update to the current animal ordinance was in 1995, and the primary difference in the proposed ordinance was in the care of animals. He expressed his appreciation to the citizens group that began working on the proposed ordinance in July 2008, and stated the group did not want to be identified by name since it was such an emotionally sensitive issue. He further stated that 2300 animals had been surrendered to the animal shelter in 2008, of that number 436 dogs and 209 cats were adopted out; 1330 animals were euthanized; and 325 animals were re-claimed by owners. He stated the proposed ordinance would address much of that problem because it emphasized the spaying and neutering of animals which would decrease the number of euthanized animals.

Mayor Marshall began with page one of the ordinance and asked for comments on each page. There were no comments regarding page 1, but members of the public made the following comments regarding Section 90.003 Definitions, pages 1 through 8: who would decide food quality under the definition of “adequate care”; how pot belly pigs should be considered pets instead of livestock; how the number of dogs should not be increased from 2 to 4 because it would increase the police calls for barking dogs and dogs running loose; how the number of pets was arbitrary because it should depend on responsible ownership; the issue of civil liberties; how the number of 4 pets allowed per household and the definition of “private kennel” were contradictory; the different types of “hobby breeder” and how the definition needed more distinction; how electric fences were illegal so it should be removed from the definition of “Enclosed/Enclosure (proper)”; how the police should be handling crime and not calls about dogs; how the definition of an adult dog should be changed from 3 months old to 6 months old in the definition of “private kennel”; how dogs bark for security reasons; how there should be accommodations on the number of animals for people that have indoor pets only; concerns about how the proposed ordinance would be enforced; how “restraint” and “verbal control” were defined; discrepancies in the definitions of “domestic animals”, “exotic animals” and “wild animals”; how all venomous animals should require a permit; how ferrets must be spayed or neutered per Federal law; and how the prohibition of single point tethering should be removed.

Councilor Wheaton-Smith commented on the number of animals and proposed that 2 animals should be kept because it had been that way for years. However, he said it should articulate that there would be no violation with more than 2 animals unless there was an underlying behavioral issue, such as: its odor; its noise; its abuse; its neglect; or its aggression. He proposed language that a violation would not go straight to a citation, but before a person would get a citation on having more than 2 animals they would get a verbal and/or written warning on the underlying complaint. He stated the benefit of having that system would be that the underlying complaint would be addressed, and it was the reasonable person standard. If that failed, then an objective enforcement standard would have been established that the Municipal Judge would be able to use when faced with a case. He further stated that many of the problems were already covered under State statute or under the existing Code, and he had not heard an objective definition of the problem.

Councilor Nupp stated there needed to be a limit on the number of animals and commented on cases where individuals had excessive numbers of animals in their home. He also stated that the proposed ordinance only mentioned barking dogs in one sentence because the noise issue was a separate issue, and he did not want to get into that with the proposed ordinance.

Mayor Marshall commented that he thought the entire goal of an animal care and control ordinance would be to have a happy, healthy animal that was well taken care of, and was not a nuisance to the neighborhood.

Councilor May commented on the definition of “running at large/stray” regarding an animal not under the immediate control or restraint of the owner, and asked how voice commands to control the animal applied to the definition. Councilor Nupp commented that voice commands were often unreliable. There was further discussion about the definition of “restraint” and how it defined immediate control as being on a leash/lead, and the definition of “verbal control” as it applied to certain animals. Councilor Nupp stated it was a liability issue. Attorney Scavron commented that there was a redundancy in the definitions and suggested that the definition of “running at large/stray” be dropped because it was covered under the sub-topic of “Restraint of Animals, Section 90.060”, and the requirement was for a leash or lead on public property with no exception for voice command. Councilor Wheaton-Smith stated it was a civil issue, and they should legislate to the minimum and enforce the current laws.

Mayor Marshall called for a recess at 8:10 p.m. and called the meeting back to order at 8:23 p.m. He stated that additional meetings would be required to get thorough and complete public input and the consideration of all the debate and issues. Councilor Wheaton-Smith commented that the definition of “service animal” was restrictive with regard to people who were not mobility impaired. Councilor Bettison stated that the definition for “service animal” from the Department of Justice’s Americans with Disabilities Act website was more applicable because there was no such thing as a qualified service animal because there were no certificates that had to be produced. She stated that an individual who had a disability that may not be visible could state that their animal was a service animal, and they were not required under Federal law to produce anything stating such.

Councilor Wheaton-Smith stated that he wanted to know what the problem was, how much the proposed ordinance would reduce the problem, or what the process was. Councilor May questioned sub-topic “Administration, Section 90.004 Enforcement” because it included code enforcement officers that were not deputized or certified as law enforcement. Attorney Scavron stated the law would determine what was appropriate regarding the limitations of Authorized Town Personnel. Roger Groves, Code Enforcement Supervisor, stated barking dog complaints were never handled by code enforcement officers, but Attorney Scavron stated it was legal to do so. Councilor Wheaton-Smith asked what problem was not met by the current Code or by State statute. He stated that he believed the proposed ordinance was infringing on people’s private lives and civil liberties. Councilor May and Councilor Bettison agreed with Councilor Wheaton-Smith. There was further discussion about the number of animal complaints that were received by the Police Department per month; euthanizing animals; dangerous animals versus wild animals; why dogs growl; and how the problem was irresponsible owners of animals. Councilor Wheaton-Smith stated that they did not define the problem. He recommended the withdrawal of the Notice of Intent Ordinance No. 1153 and that a group should be chartered to work with the real stakeholders and have their meetings televised on CATS.

ADJOURNMENT – Councilor Wheaton-Smith made a motion to adjourn at 9:00 p.m. Councilor May seconded the motion. All were in favor, motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk