

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
July 8, 2014, 6:00 p.m.**

Present:

Michael Shawn Morones, Mayor
Cynthia Ann Bettison, District 1
Lynda D. Aiman-Smith, District 2
Jose A. Ray, Jr., District 3
Guadalupe Cano, District 4

Also Present:

Alex C. Brown, Town Manager-Finance Director
Ann Mackie, Town Clerk
Robert L. Scavron, Town Attorney
Tim Heidrich, Acting Fire Chief

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE – Mayor Morones called the meeting to order at 6:00 p.m. He said Councilor Ray was present by phone.

2. CEREMONIES – None.

3. PROCLAMATIONS – "New Mexico Hunger Week" - July 14 - 18, 2014 - Mayor Morones read and presented the proclamation to Pam Eley of the Southwest New Mexico Council of Governments. Mrs. Eley stated New Mexico was one of the highest states facing food insecurity at 21.2 percent. She said their office would be represented at the upcoming Food Hunger Summit in Albuquerque, New Mexico.

4. PUBLIC INPUT – Lucy Whitmarsh, President of the Board of Silver City MainStreet, introduced Tim Brown as their new manager. Mr. Brown commented on his background and said he was excited to be involved with MainStreet New Mexico and looked forward to helping to implement the program to the Town of Silver City. Ms. Whitmarsh commented on the upcoming 3rd Annual Big Ditch Day at the Big Ditch Park on July 19th.

5. COUNCIL COMMENTS – Councilor Bettison stated her concern and opposition to the Grant County Commission's intent to adopt a County Hold Harmless Gross Receipts Tax (HHGRT) of 3/8ths percent at their Thursday, July 10, 2014 meeting. She said the Town Council had openly discussed over the past year and a half the unintended consequences and impacts of HB 641, the Omnibus Tax Bill that was signed into law March 2013, that effectively repealed the Hold Harmless provision of the Gross Receipts Tax (GRT) over 15 years beginning July 1, 2015. She said it meant an annual loss of over \$1.7 million, or 18 percent of the Town's total GRT. She stated that she had been very forthcoming at Council meetings along with the Town Manager, Mayor Morones, and other Council members, that the Town of Silver City was 1 of 12 municipalities out of 105 in the state that would not be made whole by the imposition of the 3/8ths of 1 percent GRT that was provided in the Omnibus Bill as a way for municipalities and counties to recover lost revenues for the repeal of the Hold Harmless provision of the GRT. She said Grant County, like other counties under 40,000 in population and municipalities under 10,000 in population, would get to retain their Hold Harmless distribution. She said the distribution for Grant County was \$350,000 annually per the former County Manager. She stated the County Commission would be taking advantage of poorly written legislation that provided them with the option to adopt the 3/8ths HHGRT rather than keeping their current Hold Harmless distribution, and that it would be at the expense of their constituents and the Town of Silver City. She said that for every 1/8th of HHGRT the County would receive an estimated \$658,000 annually and at 1/8th HHGRT their revenue would be \$308,000 more annually than their current \$350,000. She said they would be making money, and that multiplied by 3, for the proposed 3/8ths, the County would annually receive \$1.97 million which was \$1.62 million more than the current \$350,000 annual Hold Harmless distribution. She stated that legislators and the authors of the Omnibus Tax bill repeatedly stated that the intent of the 3/8ths option was not for municipalities and counties to adopt it to make money, but for them to be made whole in revenue losses due to the repeal of the Hold Harmless provision. She said the Town of Silver City was the one imminently threatened by the repeal of the Hold Harmless provision because they were facing an annual loss of \$1.7 million; and even when they moved to adopt the 3/8ths HHGRT they would still be facing a loss of \$600,000. She said that while the Town of Silver City was the one in imminent danger of losing its Hold Harmless

distribution beginning July 1, 2015, they had yet to adopt the 3/8ths HHGRT because the Town Council's philosophy of government was to only tax their residents what was absolutely necessary to ensure that services could be provided. She said since there had been no impact as yet, they had not adopted the 3/8ths HHGRT because it was not necessary. She also said that when Grant County's 3/8ths were combined with the Town's necessary 3/8ths HHGRT and the 1/4th local option infrastructure GRT they had available, the GRT in the Town of Silver City would jump a full 1% to 8.375%. She mentioned that the former food tax was not paid for by those individuals with food stamps or Electronic Benefit Transfer (EBT) cards until they exceeded their allotted funds, but the 3/8ths HHGRT was placed on all items other than food and thus would be paid by the low-income residents. She said there was no reduction in this tax, and their food stamps or EBT cards only ensured that they did not pay taxes on food until they exceeded their allotted funds.

Councilor Aiman-Smith thanked Councilor Bettison for her comments. She also said she brought a box of free reusable bags for the public at the meeting to take. Councilor Cano commented on her recent surgery and how she would not be able to stand up for a couple of months. She thanked Grant County and CATS (Community Access Television of Silver City) for installing the wheelchair lift. She also thanked her district for providing their concerns about the plastic bag ordinance. Councilor Ray thanked Councilor Bettison for her comments. He also said to be careful of the kids on skateboards and how the Town did go out of its way to have certain things done for kids. He said the pool was a money using thing because it cost \$82,000 to operate and the revenues were only \$28,000 so they were doing things for kids. He thanked everybody that participated in the 4th of July parade. Mayor Morones thanked Mrs. Robinson, the Interim County Manager, for being very prompt and accommodating when they requested the installation of a wheelchair lift. He thanked her for the timing to get it done to help out Councilor Cano. He said it was commendable and that he was really happy that the County acted in the manner that they did.

6. CHANGES TO THE AGENDA – Councilor Aiman-Smith made a motion to move up New Business, Items A and B, ahead of Unfinished Business since the bond counsel was there from Albuquerque and needed to go back. Councilor Bettison seconded. Mayor Morones said there was motion and a second to move New Business ahead of Unfinished Business. He asked if there was further discussion, and there was none. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

7. APPROVAL OF THE MINUTES – Regular Meeting on June 17, 2014 - Councilor Bettison moved to approve the minutes of the Regular Meeting of June 17, 2014. Councilor Aiman-Smith seconded. Mayor Morones stated there was a motion and a second to approve the minutes of the Regular Meeting of June 17, 2014. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

8. REPORTS –

A. Lisa Jimenez, Manager of the Non Profit Resource Group, will report on the activities to date on behalf of local non-profit organizations. Ms. Jimenez said she was with the National Center for Frontier Communities, and that it was a national advocate organization that advocated on behalf of rural and frontier communities. She commented on the Non Profit Resource Group and provided a report on what they had done in the past year. She said they provided an annual survey of non profits; provided curbside consulting every Wednesday to provide free services for any non profit issue; how the heart of their services was to provide their strategic consulting services to non profits and community coalitions which began with a free capacity assessment; how they had 22 members of professional consultants; how the support of the Town was important because they provided services on a sliding fee schedule based on the organization's budget; how they provided workshops, trainings, networking opportunities, and free online services; and how many key services were provided in the community by non profits, etc. There was further discussion.

B. Staff Reports – Acting Fire Chief Heidrick reported the Gila National Forest Service had lifted Stage 1 fire restrictions in the forest and that Grant County was also looking to lift their restrictions. He provided data reported by the National Weather Service and stated they were no longer meeting any criteria for the Red Flag warnings so the Silver City Fire Department would also lift the fire restrictions.

Councilor Bettison moved for a short recess at 6:47 p.m. to get Councilor Ray back on the line. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second for a short recess. He asked all those in favor to say aye, and Councilor Bettison, Councilor Aiman-Smith, and Councilor Cano said aye. He asked if any were opposed, and there were none. Motion carried. Mayor Morones called the meeting back to order at 6:58 p.m. Councilor Ray was present by phone.

9. PUBLIC HEARINGS - None.

New Business was moved ahead of Unfinished Business. See Item 6. Changes to Agenda above.

11. NEW BUSINESS –

A. Approval / Disapproval of Resolution No. 2014-23: relating to the Town of Silver City, NM Gross Receipts Tax Improvement Revenue Bonds, Series 2014; establishing the exact aggregate principal amount of the bonds of \$1,500,000, maturity dates, rates of interest, redemption features and price with respect to such bonds in accordance with Town Ordinance No. 1228 adopted on June 9, 2014; approving documents relating to the bonds; and ratifying action previously taken in connection therewith. Chris Muirhead, bond attorney with Modrall Sperling in Albuquerque, NM, thanked the Council for moving the item up on the agenda. He said Resolution No. 2014-23 followed up on Ordinance No. 1228 that authorized the issuance of bonds in a maximum amount of \$1,500,000 in 2 series; a taxable series and a tax exempt series. He said the Resolution authorized the 2 series of bonds for a new amount of \$1,150,000 and broke it down into a \$650,000 tax exempt issuance and a \$500,000 taxable issuance, and he explained the reason for the differentiation. He said the lender for the transaction was NBH Capital Finance and that they had offered to buy the notes which was the same as a bond or debt obligation. He said the tax exempt notes had maturity rates from June 1, 2018 through June 1, 2024 and the interest rate would be 3.16 percent. He said the taxable notes had maturity rates from June 1, 2015 through June 1, 2021 and the interest rate would be 3.69 percent. There was further discussion. Mr. Muirhead discussed when the Town could prepay the notes and said an amendment to the Resolution was required on page 4, Item D, to remove the blank area in the second paragraph so it would say, "a spread in effect at the time of prepayment as determined by Purchaser as identified in the closing documents." He reviewed each of the sections in the Resolution. He said it would close by July 22nd and the money would be available to the Town at that time. Councilor Bettison stated the bond would be paid from the state's share of gross receipts tax and that no new tax would pay for the 2 bond series notes. Manager Brown said the only thing imposed was dedicated as the current gross receipts taxes that were adopted in 1985. Councilor Bettison and Manager Brown reviewed the list of projects that the bonds were for that included the purchase of police vehicles, Emergency Medical Services (EMS) vehicles, a swimming pool liner and other things for the pool, a club house at the Golf Course, and the concession stand and bathrooms at Scott Park. Manager Brown said the preliminary budget already had \$180,000 for debt service so it was well within the budget and they could amend it down. Councilor Bettison moved to approve Resolution No. 2014-23 relating to the Town of Silver City, New Mexico Gross Receipts Tax Improvement Revenue Notes, Series 2014 to be issued in the aggregate principal amount of \$1,150,000, consisting of two series (1) 650,000 Gross Receipts Tax Improvement Revenue Notes, Series 2014A (Tax-Exempt) and (2) \$500,000 Gross Receipt Tax Improvement Revenue Notes, Series 2014B (Taxable); establishing the exact aggregate principal amount, maturity dates, rates of interest, redemption features and price with respect to each series of notes in accordance with Town Ordinance No. 1228 adopted on June 9, 2014; approving documents relating to the notes; and ratifying action previously taken in connection therewith and repealing all action inconsistent with this Resolution, and amending page 4, Section 4. D. second paragraph, sixth sentence down, to remove "of ____%" so it would read, "(ii) a spread in effect at the time of prepayment as determined by Purchaser as identified in the closing documents." Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second as read into the record. He asked if there was further discussion, and there was none. He asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted aye; and Councilor Cano voted aye. Motion carried.

B. Approval / Disapproval of an Agreement between the Town of Silver City and Local 2430 International Association of Firefighters, AFL-CIO, July 1, 2014 to June 30, 2018. Manager Brown said he and the Fire Department staff met with the Fire Union a few weeks before and the summary of changes to the contract was recommended by the Union as well as the staff. He reviewed some of the changes and said it was a 4 year contract and that they would open negotiations in April for monetary matters and anything identified by the management committee. He commended the current management and the Union because they worked hand in hand with the labor

management committee to get the work done before they went into negotiations. Mayor Morones asked if there were any questions, and there were none. He said he would entertain a motion. Councilor Cano moved to approve an Agreement between the Town of Silver City and Local 2430 International Association of Firefighters, AFL-CIO, July 1, 2014 to June 30, 2018. Councilor Ray seconded. Mayor Morones said there was a motion and a second and he repeated the motion. He asked if there was any further discussion, and there was none. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

10. UNFINISHED BUSINESS -

A. Approval / Disapproval of Ordinance No. 1231: an Ordinance amending Chapter 40 (Solid Waste), Article II (Litter Control) of the Town of Silver City Municipal Code, by adding a new Section 40-27 (Reduction of Single-Use Plastic Carryout Bags). Councilor Bettison stated Notice of Intent Ordinance No. 1231 was introduced on May 27th and was considered necessary for the health, safety, and welfare of the citizens of the Town of Silver City. She said the 4 page ordinance had been available for viewing on the Town's website for 6 weeks, and that she had received overwhelming support via email, voicemail, phone calls, and personal contact by commercial retailers and merchants and Town of Silver City residents, and that she had only received 4 negative comments. She said the Ordinance as written would eliminate litter on public and private land and would significantly reduce the unsightly appearance of the town through the continued redistribution of litter caused by wind action, and that the predominant thing that moved around with wind action was single-use carryout plastic bags. She said it would beautify and enhance the environment for the residents and visitors thereby mitigating the negative effect the proliferation of plastic bag litter had on the residents of the Town and the detrimental effect on tourism which resulted in negative economic consequences for the Town and its inhabitants. She said it would also reduce deposits at the landfill and enable the landfill to avoid fines for the plastic bag litter which could result in increased landfill fees for both Town residents and businesses and others that used the landfill. She made further comments and stated if the Ordinance was approved it would not go into effect for 6 months which would give time for retail establishments to use up their single-use bag stock and to change over to another system. She said the Town would carry out an educational campaign for residents and for those that shopped in Silver City, and that they would be making available free reusable cloth bags because the money had already been allotted for it in the budget. She said the Office of Sustainability could answer any questions, and stated it was important to remember that in the long run it would beautify their town and ensure that not only residents, but visitors to the town, could enjoy themselves and not have plastic bag litter.

Councilor Bettison moved to approve Ordinance No. 1231: an Ordinance amending Chapter 40 (Solid Waste), Article II (Litter Control) of the Town of Silver City Municipal Code, by adding a new Section 40-27 (Reduction of Single-Use Plastic Carryout Bags). Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second and he repeated the motion. He asked if there was further discussion from the Council. Councilor Bettison asked Manager Brown to discuss the issues at the landfill. Manager Brown discussed how the enforcement officials from the Solid Waste Bureau had very specific issues with the cleanliness at the landfill and that the majority of the causes were the plastic bags that were flying off the Southwest Solid Waste Authority's property. He said there could be fines related to the litter and that any costs to mitigate the litter problem could be passed to the consumer. He provided more details, and there was further discussion. Mayor Morones opened the discussion for public input. Comments that were in favor of the adoption of Ordinance No. 1231 were received from Walter Szymanski, Linda Smith, Azima Lila Forest, Alan Mong, Gordon West, Shelby Hallmark, Allyson Siwik, Cissy McAndrew, William and Elizabeth Lloyd, and Kathy Anderson. Scott Terry, President of the Silver City Grant County Chamber of Commerce, said they did not oppose it, and that it had some good merits, but some businesses needed more time to visit with the Council and the Office of Sustainability employees to get educated about it. He requested that the vote be postponed for 30 days. Councilor Cano said she had been doing her own research in the past 6 weeks and that she had learned a lot about the needs of the disabled in the town. She said she would be very pleased with the Office of Sustainability if they would think about the needs of the disabled when they did the educational program and to include poor people, disabled people, Hispanic people, and people who were locals that lived here their entire lives. She said none of those people were represented at the meeting. She said those people needed to sit at the table with them before they started the educational process. She said she would support the Ordinance if they were willing to do that. Mayor Morones summarized with the following: how he was always an advocate of including stakeholders and making sure everybody had a voice; how the Town followed procedures by publishing legal notices and notices of intent to adopt an ordinance in order to educate the public; how the public was supposed to take ownership in their own responsibility to know what

their government was doing by making comments and making their voices heard; how the public and businesses had plenty of time to educate themselves by reading the 4 page Ordinance in the past 6 week period; how in the 6 week period a huge body of individuals, consumers, and businesses came out to support it so the Town had been open and transparent; how in the next 6 months there would be plenty of time for education and transition and for stakeholders to find out how staff was going to interpret the policy and put it into procedure; how the recommendation had been brought forward to the Council in 2009 by the Mayor's Climate Protection Agreement Citizens Advisory Committee; how the Town was not a leader, but was following a huge body of over 200 cities that had already done it and the Town could utilize what they had done to help work out the procedures on how to apply the policy; Town staff was strongly encouraged to reach out and communicate with all businesses, business groups, lower income individuals, and disabled individuals that wanted a voice during the interim 6 months to make sure the Ordinance was well understood and known by the community; and how some retailers in Town may not have the type of plastic bags that were being banned so they may not be affected. Councilor Bettison thanked the Mayor and everyone for their comments, and she said she wanted to point out that it had been 6 weeks and they were only required to have 15 days for comments for a notice of intent ordinance. She said she was the one who requested to postpone it to the first meeting in July in order to add additional weeks for comment, and that the bulk of comments were received 6 weeks ago. She thanked Councilor Cano for her comments and said she was also disabled and found it much easier to use a reusable bag. She said they would make sure that all of the citizens and residents understood the Ordinance and that the Town and the Office of Sustainability's education efforts would be very inclusive as the Mayor had said, and that the Town would provide reusable bags. Councilor Ray commented on his family's grocery store that used paper bags and boxes a long time ago so he did not see anything wrong with the Ordinance. Councilor Aiman-Smith thanked all of the folks in her district who emailed her and said only 1 person was concerned and everybody else was thumbs up. Manager Brown reminded everybody that the Town's budget included funds to purchase reusable bags and that they would make them available for free to the public until they ran out, that that he would probably add funding to the Office of Sustainability in order to get additional people to help with outreach and to help with Councilor Cano's comments. Mayor Morones said there was a motion and a second for the approval of Ordinance No. 1231: an Ordinance amending Chapter 40 (Solid Waste), Article II (Litter Control) of the Town of Silver City Municipal Code, by adding a new Section 40-27 (Reduction of Single-Use Plastic Carryout Bags). He asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Cano voted aye; and Councilor Ray voted aye. Motion carried.

Councilor Bettison moved for short break at 8:16 p.m. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second for a recess. He asked all those in favor to say aye, and all 4 Councilor said aye. He asked if any were opposed, and there were none. Motion carried. Mayor Morones called the meeting back to order at 8:30 p.m.

B. Approval / Disapproval of Ordinance No. 1232: an Ordinance approving the execution of a Memorandum of Understanding, the effect of which creates a long-term lease of the Silco Theater to the Corporation for Downtown Development, d/b/a Silver City MainStreet. Attorney Scavron said the original Notice of Intent Ordinance No. 1232 included an attached Memorandum of Understanding for a long term lease, and that it was brought to their attention by MainStreet that during the original negotiations they wanted the option to purchase the Silco after all of the debt service and money had been paid back to the Town after 15 years. He said the money that MainStreet had paid in rent, and other reimbursements of the Town for the Town's expenses would be applied towards the purchase price, and the purchase price would be the higher of the contributions and rents that they paid over the years, or the appraised value. He said under the law the Town could not sell any Town property for less than its appraised value, and that it would have to go through the Town's Ordinance that governed the sale of Town-owned property. He said the option to purchase to be given to MainStreet had been added in a new paragraph 24, and it also included a right of first refusal so if MainStreet exercised the option to purchase and then decided to resell it, then the Town would have the right of first refusal for 10 years after MainStreet would buy back the Silco. He said if a future Town Council wanted to take the building back that possibility existed. He said Ms. Whitmarsh was comfortable with the concept and the sponsor, Councilor Ray, was comfortable with it. There were no questions from the Council. Lucy Whitmarsh, President of the Board for Silver City MainStreet thanked the Town for offering them the opportunity and for working with them to develop the document, and that MainStreet was in support of it and hoped it would be passed. There were no questions. Councilor Ray moved to approve Ordinance No. 1232: an Ordinance approving the execution of a Memorandum of Understanding, the effect of which creates a long-term lease of the Silco Theater to the Corporation for Downtown Development, d/b/a Silver City MainStreet with the amendment to add new paragraph 24

Option to Purchase Premises and Right of First Refusal, and he asked Attorney Scavron to read the amendment. Attorney Scavron read paragraph 24 in its entirety. Councilor Bettison seconded the motion as stated by Councilor Ray and Attorney Scavron. Mayor Morones said there was a motion and a second for the approval of Ordinance No. 1232: an Ordinance approving the execution of a Memorandum of Understanding, the effect of which creates a long-term lease of the Silco Theater to the Corporation for Downtown Development, d/b/a Silver City MainStreet with the amendment to add new paragraph 24 Option to Purchase Premises and Right of First Refusal. He asked if there was further discussion, and there was none. He asked for a roll call vote. Councilor Cano voted aye; Councilor Ray voted aye; Councilor Aiman-Smith voted aye; and Councilor Bettison voted aye. Motion carried.

C. Approval / Disapproval of Ordinance No. 1233: an Ordinance amending Chapter 52 (Utilities), Article III (Water and Sewer Rates and Charges . . .), Section 52-94 (a) (Water deposit) and Section 52-100 (Bill for Illegally Used Services) of the Town of Silver City Municipal Code. Manager Brown said Ordinance No. 1233 changed the deposit required when turning on utility services from \$100 to \$200. He said it would not be retroactive and was only for future customers, and he provided further details. He said the other change in the Ordinance was the penalty for illegally using Town services and that they would charge 300 percent of what the estimated cost of what was illegally taken; that it was a standard practice, and they were just adding it to the Code book. He discussed how the Town would not subsidize bad debt from people who chose to skip on their bill. There was further discussion. Councilor Aiman-Smith moved to approve 1233: an Ordinance amending Chapter 52 (Utilities), Article III (Water and Sewer Rates and Charges . . .), Section 52-94 (a) (Water deposit) and Section 52-100 (Bill for Illegally Used Services) of the Town of Silver City Municipal Code. Councilor Bettison seconded. Mayor Morones said there was a motion and a second for the approval of Ordinance No. 1233: an Ordinance amending Chapter 52 (Utilities), Article III (Water and Sewer Rates and Charges . . .), Section 52-94 (a) (Water deposit) and Section 52-100 (Bill for Illegally Used Services) of the Town of Silver City Municipal Code. He asked if there was any further discussion, and there was none. He asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted aye; and Councilor Cano voted aye. Motion carried.

12. ADJOURNMENT – Mayor Morones asked for a motion to adjourn. Councilor Bettison moved to adjourn at 8:49 p.m., and Councilor Aiman-Smith seconded. Mayor Morones stated there was a motion and a second to adjourn. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if there were any opposed, and there were none. Motion carried.

Michael S. Morones, Mayor

Attest:

Ann L. Mackie, Town Clerk