

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy. 180, Silver City, NM
September 27, 2016, 6:00 p.m.**

Present:

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

Also Present:

James Marshall, Assistant Town Manager
Robert L. Scavron, Town Attorney
Ann L. Mackie, Town Clerk
Milo Lambert, Fire Marshal
Ed Reynolds, Police Chief

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE – Mayor Ladner called the meeting to order at 6:00 p.m.

2. CEREMONIES – None.

3. PROCLAMATIONS - "Fire Prevention Week" - October 16 - 22, 2016 - Mayor Ladner read the proclamation and presented it to Fire Marshal Milo Lambert who stated the Silver City Fire Department would be hosting all of the public schools and their classes at the two fire stations for tours and fire safety presentations. He said there would also be public speaking events to promote "Fire Prevention Week". He thanked the Mayor and Councilors for the proclamation.

4. PUBLIC INPUT – Mark Donnell, M.D. commented on the June 11, 2016 traffic stop involving District Attorney Francesca Martinez-Estevez and gave his opinion that her episode of impaired driving made her unfit for the job of District Attorney. He said they needed public support and outcry to remove her from her public office, and that they really needed the involvement of their community leaders. He asked the Town Council to consider passing a resolution of "No Confidence" in District Attorney Martinez-Estevez. Larry McLaud commented on his concern of noise issues in town and mentioned the number of citations issued under the noise ordinance. He said there was no enforcement of the ordinance and stated further that the all-terrain vehicle (ATV) issue had 3 main issues that he was concerned about: 1) how the noise with a decibel level of 96 was over 50 percent higher than the decibel limit for cars and trucks in town, and there was no enforcement of the noise ordinance, 2) speed, and 3) safety because there were a lot of problems with ATVs on paved roads. He urged the Town Council not to pass the ordinance. Susie Siedentop commented on ATVs on Silver City streets or adjacent to the streets, etc. and how it was a major safety issue; that it should be a county issue not a Silver City issue. She asked the Town Council to not spend one more minute on the idea. She also thanked Councilor Bettison and Councilor Ray for the amendment of breeding dogs in the Silver City limit. She said the police and animal control officer were already overworked. She offered to send letters.

5. COUNCIL COMMENTS - Mayor Ladner said Alex Brown, Town Manager-Finance Director, was not present because he was accepting a very prestigious award. He said Manager Brown had been awarded the New Mexico Association of Energy Engineers "Energy Manager of the Year Award" because his accomplishments on the solar array at the Town's Wastewater Treatment Plant and the radio read water meter project were significant achievements and showed his commitment to saving energy and money for the Town. He said it was an outstanding accomplishment for Manager Brown and recognition for the Town of Silver City, and he congratulated Manager Brown. He also mentioned that they felt strongly about Manager Brown's competence as their Town Manager and that he was recently nominated for the New Mexico Municipal League's "City Manager of the Year Award," but regrettably a manager from another city was chosen. He thanked everyone that sent letters in support of his nomination and stated Manager Brown was an asset to their community. The Mayor also thanked Clerk Mackie for representing the Town of Silver City and the New Mexico Municipal Clerks and Finance Officers Association as she served as President of the Clerks Association and as a Director on the New Mexico Municipal League's Board of Directors from 2015-2016. He said she would continue to serve as Past President of the Clerks Association for another year beginning on October 1. He commented that he recently attended the Mayors Summit in Albuquerque and worked with Mayors from all over the

state, and on October 6 he would attend the New Mexico Department of Transportation's meeting in Albuquerque to present the Town's formal request to name the newly reconstructed Hudson Street Bridge located on Highway 90 as the "Veterans Memorial Bridge." He announced that Life Quest would have a ribbon cutting on September 29 for the new People's Park and youth mural, and that soon there would be streaming live video from W Mountain as a result of the Town, Western New Mexico University, and Grant County working together to make it happen. He said it was good to see community groups working together to get some good things done.

Councilor Aiman-Smith announced upcoming community input meetings for specific sections of the Comprehensive Plan by the Community Development Department and she encouraged community members to attend. Councilor Bettison said she was looking forward to her first meeting as the New Mexico Municipal League's Treasurer on October 1 and she thanked the Council for their support of her election as Treasurer. Councilor Cano congratulated Benjamin Fisher, reporter for the Silver City Daily Press, for winning 2 awards from the New Mexico Press Association.

6. CHANGES TO AGENDA – None.

7. APPROVAL OF MINUTES - Regular Meeting on September 13, 2016 - Councilor Aiman-Smith moved to approve the minutes of the Regular Council Meeting of September 13, 2016. Councilor Bettison seconded. The Mayor asked if there was any discussion, and there was none. He asked all of those in favor to approve the minutes to say aye, and all 4 Councilors said aye. He asked if any were opposed to say nay, and there was no opposition. Motion passed.

8. REPORTS -

A. Staff Reports. James Marshall, Assistant Town Manager, gave the following summary of what happened at the Revenue Stabilization and Tax Policy Committee meeting that he attended on September 14-15, 2016: how they provided the history of taxes and how they were distributed; and how you could see the characteristics of a comprehensive and good tax at the New Mexico Tax Research Institute and he named those characteristics. He named the various types of tax: property tax, sales tax, personal income tax, excise tax and corporate tax, and that each one had different characteristics and impacts on the payer. He said imposing the hold harmless three-eighths percent gross receipts tax authorized by the legislature created a windfall for some and for others it created a deficit, and the committee spent 2 days identifying the problems and tried to address potential solutions. He stated the gross receipts tax created pyramiding and was a progressive tax, and it was very prime for the exemptions and credits versus the retail sales tax. He discussed issues with the property tax; the committee's model; his concern of reaching budget neutral and how there were 7 different tax restructuring models; and how with any model somebody would be negatively impacted and somebody would win greatly. He said they would keep following it because some of the discussions could end up being draft bills to the legislature. There was further discussion.

9. PUBLIC HEARINGS - None.

10. UNFINISHED BUSINESS- None.

11. NEW BUSINESS -

A. Approval / Disapproval of 2 Public Celebration Permit Applications for Little Toad Creek's Oktoaderfest Street Fair on Saturday, October 15, 2016 with alcohol service from 1:00 pm to 10:00 pm at 200 N. Bullard Street between Broadway and Yankie Streets. Liquor License Holder Information: 1) Little Toad Creek, LLC, DBA Little Toad Creek Distillery #63004, HC68 Box 134, Silver City, NM, and 2) Little Toad Creek, LLC, DBA Little Toad Creek Brewery #67021, HC68 Box 134, Silver City, NM. Teresa Dahl-Bredine, co-owner of Little Toad Creek, LLC, requested approval of the permits for their annual and third year community fiesta that would be open to all and free. She said they were celebrating the German heritage of Oktoberfest and she provided details of the event. There was further discussion about the following: how Little Toad Creek needed to start looking at other locations for their events because of citizen concerns, small business concerns, and festival fatigue concerns; how they needed to have real conversations with their business neighbors; how as sponsors they should be really conscientious about trash pickup and about leaving the space more beautiful; concern about security on who wears the bands and how their staff should card everybody; and how police officers walk through and if they observed a violation they acted upon it.

Councilor Ray moved to approve the 2 Public Celebration Permit Applications for Little Toad Creek's Oktoaderfest Street Fair on Saturday, October 15, 2016 with alcohol service from 1:00 pm to 10:00 pm at 200 N. Bullard Street between Broadway and Yankee Streets. Liquor License Holder Information: 1) Little Toad Creek, LLC, DBA Little Toad Creek Distillery #63004, HC68 Box 134, Silver City, NM, and 2) Little Toad Creek, LLC, DBA Little Toad Creek Brewery #67021, HC68 Box 134, Silver City, NM. Councilor Cano seconded. Mayor Ladner 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 passed.

B. Approval / Disapproval of Resolution No. 2016-24: a Resolution of the Town of Silver City ratifying a certain agreement between the Town of Silver City and the Southwest New Mexico Council of Governments, dated September 27, 2016, and authorizing the execution of same by the proper official of the Town of Silver City. Assistant Town Manager Marshall said it was an annual Resolution that authorized them to retain the services of the Council of Governments for about \$6,000 for the whole year. He said their services were extremely valuable to the Town and considering the cost it was amazing what they had provided to the Town. He asked that they include the appointments of the voting member and 2 alternates in the motion. Councilor Bettison moved to approve Resolution No. 2016-24: a Resolution of the Town of Silver City ratifying a certain agreement between the Town of Silver City and the Southwest New Mexico Council of Governments, dated September 27, 2016, and authorizing the execution of same by the proper official of the Town of Silver City with Alex C. Brown, Town Manager-Finance Director, as the voting member, Peter Pena, Public Works Director, as Alternate No. 1, and Councilor Cynthia Ann Bettison as Alternate No. 2. Councilor Aiman-Smith seconded. Mayor Ladner asked if there was any 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 passed.

C. Approval / Disapproval of Resolution No. 2016-25: a Resolution authorizing the execution of a Government Obligation Contract between the Town of Silver City and Tax-Exempt Leasing Corporation. Assistant Town Manager Marshall said the Resolution was a lease purchase agreement for a street sweeper because the current sweeper in service had reached the end of its life, and they already had to replace a motor in it. He thanked the City of Bayard for loaning their street sweeper to the Town, and that it was critical for chip seal projects. He said the money would come out of the water and sewer fund which was healthy and could support it. Mayor Ladner asked for a motion. Councilor Bettison moved to approve Resolution No. 2016-25: a Resolution authorizing the execution of a Government Obligation Contract between the Town of Silver City and Tax-Exempt Leasing Corporation. Councilor Aiman-Smith seconded. Mayor Ladner asked if there was any 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 passed.

Councilor Bettison raised a question of privilege for a 10 minute short break. Councilor Ray seconded. Mayor Ladner said they would take a 10 minute recess. He called the meeting back to order at 7:00 p.m.

D. Approval / Disapproval of Notice of Intent Ordinance No. 1250: an Ordinance amending Chapter 6, Section 6-1 (Definitions), Section 6-4 (Keeping of Dogs and Cats), Section 6-54 (Penalty), Section 6-166 (Breeder permits), Section 216 (License and Permit Required), Section 217 (Professional Animal Permits) and the Land Use and Zoning Code, Article III, Section 3.2 (Uses of the Town of Silver City Municipal Code). Councilor Bettison said over the years there had been concerns expressed from residents in all of the districts about breeding and kennels and whether they should be commercial or residential in residential areas. She said upon working with Attorney Scavron they found it was not included in the Land Use and Zoning Code where kennels and hobby breeders were permitted. She said to alleviate some of the concerns of noise and other issues, she and Councilor Ray were bringing it forward as an amendment to existing ordinances. She said it would eliminate the category of residential kennel, and it would limit commercial kennels and hobby breeders to 4 land use zones: the Commercial Light, Commercial Highway, Rural, and Industrial. She said it would not include the Commercial Historic District because the noise was too great given the way the buildings were and the narrowness of the streets. She stated it would increase the annual permits which had been nominal at best; that a commercial kennel would cost \$400 for the annual permit and the breeder permit would cost \$200 for the annual permit. She said anyone that currently had a residential kennel license or had a commercial kennel or hobby breeding permit in the residential land use zones, other than the four

zones mentioned, would have a period of not more than 6 months to conform to the amended ordinance once it was voted on by the Council and signed by the Mayor. She said she wanted to be clear; that it moved breeding in a commercial kennel outside of residential areas to rural zones and industrial zones that could best handle a large number of dogs. She said it would benefit the health, safety, and welfare of the community. She explained further. Mayor Ladner asked the Council if they had any questions. There was further discussion about whether there was a space limit or a requirement for a certain size for a commercial kennel and how the hobby breeder or commercial kennel must be on 1 acre of land, etc. Councilor Bettison moved to approve Notice of Intent Ordinance No. 1250: an Ordinance amending Chapter 6, Section 6-1 (Definitions), Section 6-4 (Keeping of Dogs and Cats), Section 6-54 (Penalty), Section 6-166 (Breeder permits), Section 216 (License and Permit Required), Section 217 (Professional Animal Permits) and the Land Use and Zoning Code, Article III, Section 3.2 (Uses of the Town of Silver City Municipal Code). Councilor Ray seconded. Mayor Ladner asked if there was any further discussion, and there was none. He asked for a vote of all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion passed.

E. Approval / Disapproval of Notice of Intent Ordinance No. 1251: an Ordinance amending Section 12-7-9 through 12-7-9.9 (Off-Highway Motor Vehicles-Definitions, et. al.) of the New Mexico Uniform Traffic Code adopted as the Silver City Traffic Ordinance in Chapter 50, Section 50-1 of the Municipal Code of the Town of Silver City, NM. Councilor Ray said he had been trying to get it on the record and to see if it would be allowed; that he understood there were a lot of issues, including safety, but it could be a job opportunity for some people. He said if the Notice of Intent Ordinance passed then it would open up the language for the Town Council to see if they could tone it down or add some things to it. He said he was not proposing it for the all-terrain vehicles (ATVs), but it was for the utility-task vehicles (UTVs) because they had a steering column, rubber tires, and seat belts. He said state law provided for ATVs and UTVs to drive alongside a paved road on the dirt and they could go and come in a straight line across a highway, but the county had no language on ATVs or UTVs. He said UTVs have side by side seating with seat belts, roll bars, and sides for passengers. He said they would have to be registered and with insurance. He said the Council could add their own rules to the ordinance to make it a lot safer, and he read some of the proposed attributes of a UTV that was written in the Notice of Intent Ordinance. He said they should not have UTVs on Hudson Street. He said he would like to have the ordinance for a year, and then review it. Mayor Ladner asked the Council if they had any questions. There was further discussion about the following: whether or not the Town of Silver City would have liability if the ordinance passed because the UTV manufacturer's warranty specifically stated UTVs were not for paved highways, roads or streets and how the Town's risk manager would have to address that issue; concerns about backseat passengers having arms long enough to hold on to the safety bar; how children had to be a specific height to safely ride in a UTV; lowering the decibel level for UTVs; how some people in town were already modifying their UTVs; how no pets would be allowed on a UTV; concerns about UTVs only having 1 tail light and 1 headlight; how it would increase the amount of work for police officers; how the Police Department felt it would add additional work to their load that was already high and how the enforcement may conflict with other state statutes; how there would also need to be inspections of the UTVs; risk of injuries and accidents would be worse with no airbags in UTVs and probable death if hit or broadsided; how there needed to be strict regulations; how UTVs could be used by the Police and Fire Departments; the current law regarding off road vehicles on city streets; how permission would be required to drive UTVs on private land; how the original state statute was intended for farmers and the need to travel on paved roads to get to their fields, etc.; how state statute already provided for a government entity to drive UTVs on paved roads and at the university; a quote by Governor Martinez was read; how comments received by Councilor Cano were split 50-50 for the ordinance; and how Attorney Scavron did not concede that the regulation of Silver City streets was subject to the whims of the state. Mayor Ladner said he would hear a motion. Councilor Ray moved to approve Notice of Intent Ordinance No. 1251: an Ordinance amending Section 12-7-9 through 12-7-9.9 (Off-Highway Motor Vehicles-Definitions, et. al.) of the New Mexico Uniform Traffic Code adopted as the Silver City Traffic Ordinance in Chapter 50, Section 50-1 of the Municipal Code of the Town of Silver City, NM. Councilor Cano seconded. There was further discussion by the Councilors. Mayor Ladner stated he studied the issue a great deal and at that point he had many concerns, and he respected Police Chief Reynold's take on how it would affect their community. He said he had to think about the liability involved and that they could not legislate themselves out of liability when it came to the courts. He said he had a big concern about safety when before there were air bags the chief cause of death was from the steering wheel plowing into your chest. He said they could make lots of amendments that would sound good on paper with rules and regulations, but they could not enforce the ordinances they already had on the books, like the

noise ordinance and the cell phone ordinance. He said that was his opinion. He asked for a roll call vote: Councilor Cano voted aye; Councilor Ray voted aye; Councilor Aiman-Smith voted nay; and Councilor Bettison voted nay which resulted in a tie vote. Mayor Ladner said they heard his concerns, but he also said the Town Council was the ultimate example of the democratic process where people had input and a chance to consider all of the different viewpoints, study them, and come to some conclusion. He said he did not want to stop the discussion so he voted in the affirmative with the understanding that they knew how he felt should it come to a tie vote; that any amendments would not solve the problem. Motion passed.

F. Approval / Disapproval of Notice of Intent Ordinance No. 1252: an Ordinance to approve a long-term lease for the management of the Silver City Municipal Golf Course, also known as Scott Memorial Park Golf Course, under the provisions of Chapter 48, Section 48-24 of the Town of Silver City Municipal Code. Assistant Town Manager Marshall said Notice of Intent Ordinance No. 1252 was a 10-year lease of the Golf Course to Western New Mexico University (WNMU) and it was based on the Silver Fairways lease that the Town had used historically under a different partner. He said in the lease the Town would provide the effluent and the pumping of the effluent to water the grass and in doing that there was a protection in the lease to protect the Town's permit of the discharge of the effluent. He said WNMU would maintain and operate the Club House, Pro Shop and other ancillary structures in a desirable and nice appearance. He said the current short-term lease was in place through November and he discussed the exhibits. He said WNMU would pay the Town for the operation of the liquor license and the Town would pay them something, resulting in a net zero. He provided further details and there was further discussion. Mayor Ladner said he would hear a motion. Councilor Ray moved to approve Notice of Intent Ordinance No. 1252: an Ordinance to approve a long-term lease for the management of the Silver City Municipal Golf Course, also known as Scott Memorial Park Golf Course, under the provisions of Chapter 48, Section 48-24 of the Town of Silver City Municipal Code. Councilor Aiman-Smith seconded. Mayor Ladner 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 passed.

G. Approval / Disapproval of Request for Proposal #16/17-1P: Legal Services. Assistant Town Manager Marshall said the Town issued a Request for Proposal for legal services and 3 proposals were received. He said the review committee reviewed the proposals and scored them, and it was staff's recommendation to award the Request for Proposal #16/17-1P to Robert L. Scavron and authorize the Town Manager to negotiate the contract. Councilor Bettison moved to approve Request for Proposal #16/17-1P: Legal Services per staff recommendation to Robert L. Scavron and giving authority to the Town Manager to negotiate the contract. Councilor Aiman-Smith seconded. Mayor Ladner 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 passed.

H. Approval / Disapproval to change the regular Council meeting scheduled for Tuesday, November 8, 2016 to Wednesday, November 9, 2016. Mayor Ladner said the reason the change was necessary was because the County Clerk's office required the room on November 8 for the General Election. He asked if there were any questions, and there were none. He said he would hear a motion. Councilor Aiman-Smith moved to approve to change the regular Council meeting scheduled for Tuesday, November 8, 2016 to Wednesday, November 9, 2016. Councilor Bettison seconded. Mayor Ladner asked if there was any 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 passed.

12. ADJOURNMENT – Mayor Ladner asked for a motion to adjourn. Councilor Aiman-Smith moved to adjourn at 8:05 p.m., and Councilor Bettison seconded. Mayor Ladner stated there was a motion and a second to adjourn. He asked for a vote of all those in favor, and all 4 Councilors said aye. Motion carried.

Ken Ladner, Mayor

Attest:

Ann L. Mackie, Town Clerk