

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING**

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

October 12, 2010 – 6:00 PM

Present: James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Jamie K. Thomson, District 2
Simon Wheaton-Smith, District 3
Michael S. Morones, District 4

Also Present: Alex C. Brown, Town Manager-Finance Director
Ann L. Mackie, Town Clerk
Roger Groves, Code Enforcement Supervisor
Terry Fortenberry, Police Captain
Peter Russell, Community Development Director
Peter Pena, Public Works Director

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND READING OF MISSION STATEMENT – Mayor Marshall called the meeting to order at 6:03 PM, and Councilor Wheaton-Smith read the Mission Statement.

2. CEREMONIES – None.

3. PROCLAMATIONS – None.

4. PUBLIC INPUT – Nancy Cliff thanked Robert Scavron, Town Attorney, for his successful effort to accomplish the removal of the billboard at Texas and College in historic downtown. She commented on how billboards were a dangerous distraction to drivers, etc., and she asked the Council and any interested citizens to look for creative means to remove the billboard at Highway 180 and Silver Heights Boulevard by contacting the New Mexico Department of Transportation or the billboard owner. Frank Drysdale commented that it was important for the Community Development Department to provide guidance to the Planning and Zoning Commission, and he commented on past and recent issues.

5. COUNCIL COMMENTS - The Council commented on the following: thanks were given to citizens for their creative suggestions and solutions for improvements in the Town; how any donations to the Town should be discussed with the Town Manager in order to determine the cost of maintenance, staff time, etc.; recently attended events; how university officials from Ningbo, China, visited Western New Mexico University to discuss collaboration between the two universities, and how the visitors commented on the clear and clean air of the area; thanks were given to Nancy Cliff for her work related to billboards and to Frank Drysdale for his comments; the importance of supporting all of the citizen groups that help the Town Council govern; opposition to unfunded mandates that were proposed during the Town Council's work sessions on the revised Land Use Code; reminded skateboarders to use the Silver City Skatepark and not to use the public streets; noise citations and dog complaints; how Town staff created a draft guide for new and existing businesses that would make it easier for businesses to navigate through Town; how the owner and the advertiser of the billboard that was removed at Texas and College should be honored for being receptive and understanding about the community's concern; the PNM rate increase issue; and how much input was being received at the Town Council's work sessions on the proposed revision to the Land Use Code.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES – Work Session - September 21, 2010 - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion as stated. Councilor Wheaton-Smith commented on two changes that were made to the revised draft minutes. All were in favor, motion passed. **Regular Meeting - September 28, 2010** - Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion as stated. All were in favor, motion passed.

8. REPORTS – Manager Brown asked Roger Groves, Code Enforcement Supervisor, to report on code enforcement activities. Mr. Groves reported that there were 141 open cases and 12 citations issued for the year; 80% of the cases were public nuisances and 20% were utility, sanitation, business and land use violations. He said there were 111 new

businesses, and that he was working on 4 dangerous abatement building cases. Manager Brown reported that the Code Enforcement Officers would begin using new door hangers in neighborhoods. Mr. Groves said the door hangers were a warning to notify citizens of a problem and to request citizens to contact them in order to provide information on correcting the problem. He said the goal was to get voluntary compliance and that issuing citations was a last resort. Manager Brown also reported on a small fire on a picnic table at Penny Park under the gazebo. He said it would not be hard to fix and the police would be charging a couple of individuals. He thanked the public that had helped the police. There was further discussion.

9. PUBLIC HEARINGS - None.

10. UNFINISHED BUSINESS -

A. Approval / Disapproval of Ordinance No. 1171: an Ordinance amending the Municipal Code of the Town of Silver City, Chapter 70, Section 70.01 (NM Uniform Traffic Code Adoption), Uniform Traffic Code Section 12-6-6.2 (Additional Parking Regulations). Mayor Marshall said the ordinance came forth after a lot of calls and concerns from the downtown area. He commented on the State law and how the 3' tall curbs and the parallel parking downtown made it difficult to park within 18" of the curb. He commented that there was no safety issue between the tires and the curb and how another law covered the obstruction of traffic. He said the ordinance would eliminate the 18" rule and leave other laws intact so the traffic flow would remain unimpeded. Councilor Wheaton-Smith made a motion to approve Ordinance No. 1171. Councilor Bettison seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

11. NEW BUSINESS -

A. Reconsideration of Notice of Intent Ordinance No. 1172: an Ordinance adding a section to the Town of Silver City Municipal Code establishing sex offender residency prohibitions near private or public elementary or secondary schools, playgrounds and daycare facilities, within the Town of Silver City, Grant County, NM.

Councilor Wheaton-Smith made a motion to reconsider Notice of Intent Ordinance (NOI) No. 1172. Councilor Bettison seconded the motion as stated. Mayor Marshall stated there was a motion and a second to reconsider the action from the last meeting on Notice of Intent Ordinance No. 1172, and that both parties that made the motion and second were on the prevailing party so the motion was legal for reconsideration. Councilor Wheaton-Smith said he was withdrawing his sponsorship of the sex offender residency ordinance for two reasons. He said one reason was process based because a cost benefit analysis could not be done, and he could not find a means for demonstrating that the ordinance would work. The other reason was from a content perspective and he commented on e-mail messages that he had received with several areas of concern: whether sex offenders had a higher recidivism rate and whether isolation could increase recidivism, etc. He said he did his own research and commented that sex offenders that were employed were not at their residency during the day time when kids were in school, and conversely the sex offenders would be at their residence at night when the kids were not in school. He said it was impossible for a residency ordinance to easily be effective, and for the reasons of process and content he would not support the ordinance.

Mayor Marshall stated that he also withdrew his support of the ordinance after looking at the evidence and research that was sent to the Town Council after the previous meeting. He said there was a lot of research on the topic and it went both ways to either be beneficial or not. He commented that some of it involved cause and effect of other laws that had effect on the sex offender residency type of laws; how there were social issues that involved the family when the sex offender was related to the victim when the victim could end up with a sign in their yard; and how it could have been a healthy relationship that was not addressed in original laws. He said Silver City was a fairly small town and if a 1000' circle was drawn around the services and facilities, that were listed in the ordinance, it would limit the sex offender's residency in the future to very small clusters or would ban them from certain areas which would cause other serious issues. He said there could be serious issues when banning people and clustering the sex offenders into a certain neighborhood and that it was not fair to the neighborhoods, the victim or the offender. He said the NOI process was to get a sense of the community; to get a sense of support or push back; how it spread the research base; and how it was clear that it did not need to wait until the next meeting. He said that he could no longer support it and did not want people to travel from all over the country to Silver City and learn that the sponsors had withdrawn their support. Councilor Bettison stated that the Mayor and Councilor Wheaton-Smith had addressed the issues that she had after

doing her research. There was further discussion about the NOI process. Councilor Thomson thanked the folks that said there were problems with the ordinance. Mayor Marshall asked for the vote to reconsider. All were in favor, motion passed to reconsider. He asked for a motion on the actual NOI. Councilor Wheaton-Smith stated that they always made motions in the positive so he made a motion to approve Notice of Intent Ordinance No. 1172 sex offender residency, and he said he would vote against his own motion. Councilor Bettison seconded the motion as stated. There was no further discussion. All were opposed, motion failed.

B. Report of cost of demolition for the A-frame building that was located at 1308 N. Pope St. (aka old Smoke Shop), and a request to schedule a public hearing for recovery of costs of demolition. Roger Groves reported that the total cost of demotion was \$2,220.85, and he provided the separate costs as follows: the quote for demolition was \$1,820.00 (\$700.00 for two 20-yard roll off dumpsters, \$960.00 for the Bob Cat work, and \$160.00 for the labor); dump fees of \$126.85 with the Southwest Solid Waste Authority; recording costs of \$24.00 with the Grant County Clerk's office; and attorney fees of \$250.00 with the Town's attorney. He said the quote was awarded to Richard's Bob Cat Service and the building was demolished on May 7, 2010, in accordance with the Code for the Abatement of Dangerous Buildings. He requested the Council's consideration to schedule a public hearing to recover the Town's expenses for the cost of the demolition. Councilor Wheaton-Smith asked if the appropriate notice was given to the owner, and Mr. Groves said yes. There was further discussion about providing adequate notice to the public for a public hearing, and the Mayor received the Council's consensus to schedule the public hearing on November 9, 2010.

C. Approval / Disapproval of Special Dispenser Permit Application for the Black Tie Benefit Ball on December 18, 2010 beginning at 6:00 PM, and sponsored by Mimbres Region Arts Council. License Holder: The Drifter Lounge, Silver City, NM. Faye McCalmont, Executive Director of Mimbres Region Arts Council, requested the Council's approval of the special dispenser permit application, and she answered questions about the event. There was further discussion about how a couple of the server's licenses had expired and would need to be straightened out. Councilor Wheaton-Smith made a motion to approve the application. Councilor Morones seconded the motion. There was no further discussion. All were in favor, motion passed.

D. Approval / Disapproval of Public Celebration Permit Application for the Leadership New Mexico Reception to be held on Nov. 4, 2010, from 5:30 PM to 7:00 PM, at the Western New Mexico University Museum. License Holder: St. Clair Winery, Deming, NM. Lannie Olson, alumni of the Leadership New Mexico Program, requested the Council's approval of the public celebration permit application and provided details of the Program and reception. He said the wines would not be purchased by the glass, but would be an optional beverage for the invitees of the reception. He also requested that the Town Council grant a waiver pursuant to 60-6B-10 of the New Mexico Statutes Annotated for the prohibition of dispensing alcohol within 300 feet of a school or church. He said the waiver was required since the Western New Mexico University (WNMU) Museum was located on the WNMU campus which was a school as defined by the Liquor Control Act Regulations. He said the matter was discussed with Dr. John Counts, President of WNMU, and he had no objections to the serving of wine at the reception and he signed the building owner consent on the permit application. Mr. Olson said there were no churches within 300 feet of the WNMU Museum according to the Town's Community Development Department. He said the United Campus Ministry that was located on the WNMU campus did not conduct regular church services and did not fall within the definition of churches in the Liquor Control Act. Councilor Bettison made a motion to approve the public celebration permit application and to grant a waiver pursuant to 60-6B-10 New Mexico Statutes Annotated. Councilor Wheaton-Smith seconded the motion as stated. All were in favor, motion passed.

Councilor Wheaton-Smith moved for a short recess 7:05 PM. Councilor Bettison seconded the motion as stated. All were in favor, motion passed. Mayor Marshall called meeting back to order at 7:17 PM.

E. Approval / Disapproval of Resolution No. 2010-28: a Resolution adopting policies and fees recommended by the Silver City Police Department regarding alarms, funeral escorts, and other activities requiring the payment of fees. Manager Brown presented the details and said the current Resolution for establishing fees was from 1993. He said there had been a significant increase in false alarms and the current fees were so small that there was no incentive to fix the alarms. He also commented that the fingerprint fees would increase from \$5.00 to \$10.00. There was discussion about how the wording should be changed from "fingerprints" to "fingerprint services". Police Captain

Fortenberry commented on funeral escort services and false alarms. Councilor Bettison commented on issues of the alarm systems and false alarms at the different buildings at WNMU. There was further discussion. Councilor Wheaton-Smith made a motion to pass, approve, and adopt Resolution No. 2010-28 with one amendment to change "fingerprints" to "fingerprint services". Councilor Bettison seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

F. Approval / Disapproval of Resolution No. 2010-29: a Resolution adopting a Downtown Action Plan. Peter Russell, Community Development Director, said the Downtown Action Plan was supported and required by the State MainStreet Program if the Town wished to receive any more money from the MainStreet Capital Improvement Grant Program. He said it provided an opportunity to clarify some of the ideas that had emerged with the Silver City Arts and Cultural District. He said the grant was used to hire a consultant, CommunityByDesign, and a committee was formed to serve as an advisory board to the development of the plan. He said the committee met for over a year and had an open house in November 2009 to introduce the community to some of the issues that were involved and to solicit participation and ideas. He said they also had a weekend workshop with the community and another open house in August 2010. He provided further details and Charles Dean, CommunityByDesign, answered questions from the Council. There was further discussion. Nick Seibold, Silver City MainStreet Manager, also commented on the work that was involved on the plan and other successful projects by MainStreet. Councilor Wheaton-Smith made a motion to approve Resolution No. 2010-29. Councilor Morones seconded the motion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

G. Approval / Disapproval of Resolution No. 2010-30: Metropolitan Redevelopment Area Designation: making certain findings and determinations pursuant to the Metropolitan Redevelopment Code, and designating the Silver City Downtown Metropolitan Redevelopment Area. Mr. Russell said Resolution No. 2010-30 was a follow-up to the Downtown Action Plan. He said the Metropolitan Redevelopment Area (MRA) Designation would allow a means of funding some of the recommended improvements. Charles Dean, CommunityByDesign, commented on how MRA's work and that the designation would allow them to go forward and create a MRA plan. He answered questions from the Council and said he would describe the whole process when the MRA plan was brought back to the Council for adoption, etc. Councilor Wheaton-Smith made a motion to approve Resolution No. 2010-30. Councilor Morones seconded the motion. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Wheaton-Smith - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

H. Approval / Disapproval of Bid #10/11-4: ADA street improvements on Cactus Street, Phase I. Manager Brown said the Town received 2 bids. He said the Town did a bid that had 2 alternates, but the bids received had exceeded the funds available. He said the 2 bids received were from David Montoya Construction, Inc., and Southwest Concrete and Paving, Inc. He said the bid from David Montoya Construction was the lowest bidder, but the bid was deemed not in compliance because their registration with Workforce Solutions had lapsed and they were declared non-responsive. He said the bidder that was responsive was Southwest Concrete and Paving, but their bid was 33% above the available funds. He said it was staff's recommendation to reject all bids and go back out for bid. There was further discussion. Councilor Bettison made a motion to accept staff's recommendation regarding Bid 10/11-4. Councilor Morones seconded the motion. All were in favor, motion passed.

12. ADJOURNMENT – Councilor Wheaton-Smith made a motion to adjourn at 7:56 PM. Councilor Bettison seconded the motion. All were in favor, motion passed.

_____/s/_____
James R. Marshall, Mayor

Attest:

_____/s/_____
Yolanda C. Holguin, Acting Town Clerk