

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

**Grant County Administration Center, 1400 Hwy 180, Silver City, NM
May 24, 2011, 6:00 p.m.**

Present:

James R. Marshall, Mayor
Cynthia Ann Bettison, District 1
Jamie K. Thomson, District 2
Jose A. Ray, Jr., District 3
Michael S. Morones, District 4

Also Present:

Alex C. Brown, Town Manager - Finance Director
Robert L. Scavron, Town Attorney
Ann L. Mackie, Town Clerk
Luan Mitchell, Town Planner
Peter Russell, Community Development Director
Milo Lambert, Deputy Fire Chief
Alice Jones, Chair of the Planning and Zoning Commission

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE – Mayor Marshall called the meeting to order at 6:02 p.m. and Councilor Bettison read the Mission Statement.

2. PROCLAMATIONS – Mayor Marshall proclaimed May 29 to June 4, 2011 as "Wild Wild West Pro Rodeo Week" and presented the proclamation to Pat Bearup, Rodeo Chairman.

3. CEREMONIES – None.

4. PUBLIC INPUT – Alan Mong commented on how there was no balance as far as fire restrictions because people could not have charcoal fires, etc. because of the extreme fire danger, but people could drive four wheelers on private property and not be cited.

5. COUNCIL COMMENTS – The Council commented on the following: congratulations were given to past and present managers of the Silver City MainStreet Program in recognition for winning the 2011 Great American Main Street Award from the National Trust for Historic Preservation; a possible sewer study on Mountain View Road, and study of road conditions and speeding on Ridge Road regarding the prison construction; concerns and activities of the Parks and Recreation Board; recently attended events; bicycle safety concerns; the mill and overlay project on Highway 180 by the State; a road construction project on Pope Street by the Town; Deming's homecoming celebration for Lance Corporal Juan Dominguez, a wounded soldier returning from Afghanistan, and how the Town needed to get behind their soldiers and support them; an upcoming bicycle and pedestrian plan that was called for in the Town's Comprehensive Plan; and congratulations were offered to all of the graduates of the local high schools and Western New Mexico University, and Silver Softball for taking the State championship.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES – **Special Meeting, May 6, 2011** – Councilor Bettison made a motion to approve the minutes. Councilor Morones seconded the motion as stated. There was no further discussion. All were in favor, motion passed. **Regular Meeting, May 10, 2011** - Councilor Bettison made a motion to approve the minutes. Councilor Ray seconded the motion as stated. There was no further discussion. All were in favor, motion passed.

8. REPORTS – Manager Brown reported that the Town was awarded a \$469,000 CDBG grant on that date for water line improvements in Chihuahua Hill and that all funds would go toward the construction of the water lines since the engineering was already near completion.

A. Report and review of the statistics in relation to the contract agreement between the Town of Silver City and the High Desert Humane Society by Heidi Sexton, President of the High Desert Humane Society. Ms. Sexton, President of the High Desert Humane Society, stated the Humane Society was a private New Mexico Corporation and that they had an agreement with the Town of Silver City to provide care for animals that were impounded by the Town and to manage the fines, licensing, and vaccination records. She discussed the compensation for the services and how the Town would pay \$20 per dog and \$10 per cat when the actual intake was above the established base amount. She
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stated the Humane Society had an adoption rate of 30-40% which was almost double the national average, but there were still a lot of unwanted animals to take care of. She said that she hoped that future ordinances would look at stricter spay and neuter practices since there were still high numbers of unwanted animals.

B. CATS (Community Access Television of Silver, Inc.) yearly report and update by Kendra Milligan, CATS Board President. Ms. Milligan, Board President of CATS, reported that CATS broadcasted 39,000 hours in 2010 and she listed the various channels and stations. She thanked the Town and Grant County for offering their continued support of the organization and community access television. She stated the community paid for the privilege of having the stations through franchise fees collected through Comcast Cable. She thanked the cable subscribers in the area for their contributions to community access television, and she urged satellite subscribers to switch to a service like Comcast Cable that supported their community. She introduced other people that were involved with CATS and commented on the upcoming I-Net (Information Network) that would allow for live broadcasts; how CATS was in a transition period with a new outlook and new staff; how they would like to expand and move to the Grant County Business and Conference Center; how they could help with emergency situations because they had so many multi-media; filming community events; how they were in partnership with the Silver City Public Library and the Continental Trail Alliance; an upcoming membership drive; and monthly trainings available to the community. Mayor Marshall said that he approved that the Council meetings would be broadcasted live. There was further discussion.

9. PUBLIC HEARINGS -

A. Approval / Disapproval of Ordinance No. 1178: an Ordinance for a Map Amendment/Zone Change request #ZC 11-02 from Commercial to Historic Downtown Commercial for property described as lots 3, 5, 7, 9, 10, 11, 12, 13, 14 and part of lots 4, 6, and 8 of Block 9 of the Fraser Addition, and addressed as 413 S Texas Street, Silver City, NM. The applicant is Kirsten Laney. Mayor Marshall stated that the Town Council would serve as the hearing board and he would serve as the presiding officer. He asked if any member of the hearing board had ex-parte discussions with any person regarding the subject, or had any communication from any party to the case, and none had. Mayor Marshall asked all parties and witnesses, including staff members, to come forward to be sworn in to testify by the Town Clerk. The Town Clerk swore in 3 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Luan Mitchell, Town Planner, presented the case and stated the applicant was Kirsten Laney, owner of 413 S. Texas Street. She discussed how the new zone of Historic Downtown Commercial would eliminate the restrictions of non-conforming uses in Commercial zones, and she said the various Town departments had no comments to the request. She stated the Planning and Zoning Commission recommended approval of the request to the Town Council because the 7 findings fulfilled the requirements stated in Section 6.3.2 of the Land Use and Zoning Code of 2010. She stated the Community Development Department recommended approval of the map amendment/zone change based on finding #2 (the proposed amendment would not adversely affect the implementation of the goals and policies of the Town's Comprehensive Plan) or finding #4 (the proposed amendment would not adversely impact the public health, safety or general welfare and would promote the original purposes of the Land Use Code). She said no conditions were recommended by the Community Development Department. There were no questions from the hearing board. The applicant, Ms. Kirsten Laney, stated that she would appreciate the zone change for her house that had been residentially used because it would make it easier for insurance purposes if she sold it. She said that a person wanted to buy it, but a lender wanted to charge them a higher interest rate because of the zoning. She said there were a lot of reasons for the request, but she thought it should be zoned in compatibility with its actual use. There was further discussion about the new zoning category of Historic Downtown Commercial. Ms. Laney said she was satisfied with the recommendation to change the zone to Historic Downtown Commercial because her house was historic and she would not be restricted by the commercial aspect and could continue to use it as it had been. There were no further questions by the hearing board. Ms. Laney had nothing else to reflect in the case. Mayor Marshall asked if the hearing board was ready to render its decision. Councilor Ray made a motion to approve Ordinance No. 1178 with finding #2 that the proposed amendment would not adversely affect the implementation of the goals and policies of the Town's Comprehensive Plan. Councilor Morones seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

10. UNFINISHED BUSINESS - None.

11. NEW BUSINESS -

A. Approval / Disapproval of Special Dispenser Permit Application for a benefit dinner, dance and silent auction sponsored by SHA Gymkhana, License Holder: Hurley Bar, 102 Cortez, Hurley, NM. Kandra Young stated that she was organizing a benefit dinner, dance and silent auction for the SHA Gymkhana. She provided details of the organization and the event, and requested approval of the Special Dispenser Permit Application. Councilor Ray made a motion to approve the Special Dispenser Permit Application. Councilor Thomson seconded the motion. There was no further discussion. All were in favor, motion passed.

B. Planning and Zoning Commission's recommendation regarding fireworks safety education. Alice Jones, Chair of the Planning and Zoning Commission, stated that she was bringing a recommendation pursuant to the powers that were granted to the Planning and Zoning Commission under Article VI, Section 6.1.1(3). She said the Planning and Zoning Commission instituted a series of monthly public forums to examine and study important issues facing the Town and to generate possible recommendations to the Town Council. She stated that at the May 3rd meeting, the Commission heard a report from representatives from the U.S. Forest Service and the Silver City Fire Department on the extreme fire hazard currently facing the community due to the severe drought conditions in the area and their concerns about the use of fireworks during the upcoming July 4th holiday. She said that based on those discussions the Planning and Zoning Commission was recommending to the Town Council that the Council undertake extraordinary measures, using all local media and other outreach efforts to educate the community about the extreme fire conditions and the extraordinary danger posed this year by any use of amateur fireworks. There were no questions from the Council and Mayor Marshall asked her to remain present for the next item of business.

C. Approval / Disapproval of Resolution No. 2011-19: a Resolution proclaiming a limited ban on the sale and use of fireworks. Deputy Fire Chief Milo Lambert stated they were proposing Resolution No. 2011-19 because in previous meetings and according to Section 18-51 of the Municipal Ordinances, the Fire Chief had declared a state of extreme drought and fire danger which granted them the ability under New Mexico State law to ban the use and sale of specified fireworks. He said the Resolution was to go through with that ban by banning the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices. He said currently those were the only fireworks that they could ban the sale and use of by New Mexico State law. He said the ignition of any other firework not specifically banned in paragraph 1 of the Resolution shall be limited to areas that were paved or barren that did not present a fire danger to any person or the community. He said it was in the best interest of the community to ban the sale and use of those fireworks, and that he had extensive discussions with the area distributors. There was further discussion. Attorney Scavron stated the record should also include the prior testimony of the Fire Chief about drought, sources, references, and research that he had done so when they considered the proclamation they were considering what Deputy Fire Chief Lambert was currently saying, but also the previous comments by Fire Chief Bencomo. He also stated that it was a 30 day proclamation and was part of a cumulative effort on regulating fireworks. He said it did not supplant the existing powers of the Fire Chief and that he had already issued orders that banned the ignition of anything that produced an ash and that a firework produced an ash. He said the language of the proclamation followed State law and did not lessen the Fire Chief's orders and did not get in the way of his power to declare future orders that involved open flames in the Town. Deputy Chief Lambert stated the Resolution pointed toward the actual sales and banned them to the extent of their power, and the Fire Chief's ban on ignition and burning was comprehensive enough to cover the use of fireworks. There was further discussion. Mayor Marshall commented on recent and current fires and said that he strongly supported Resolution No. 2011-19. He said they owed it to the citizens to do their best to protect them from fire and the current extreme conditions warranted the action. Councilor Bettison made a motion to approve Resolution No. 2011-19 pursuant to a finding of extreme and severe drought conditions within the Town based on the previous testimony by Fire Chief Bencomo and the present testimony of Deputy Fire Chief Lambert. Councilor Thomson seconded the motion. There was no further discussion. A roll call vote was taken: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Ray - abstained. Mayor Marshall stated that Councilor Ray needed to justify why he wanted to abstain because he was compelled to vote. Councilor Ray stated that he thought people were going to do what they wanted to do, and it would be a hard thing for the Police and Fire Department to take on. Mayor Marshall said that he was still compelled to vote because he held the office, and they needed to have a yes or no vote. Councilor Ray voted no. Councilor Morones voted aye. Motion passed.

Councilor Bettison made a motion for a short break at 7:03 p.m.. Councilor Thomson seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 7:16 p.m.

D. Approval / Disapproval of Bid #10/11-13: Homeowner rehabilitation. Manager Brown presented the details of Bid #10/11-13, and he said they received bids from G J & L Construction, Anthony, NM and Chavez Plastering and Cement Construction, Silver City, NM. He said it was staff's recommendation to award the bid to G J & L Construction for a total amount of \$27,573.90. He said that they applied the 5% preferential requirement to the local bidder, but they were still not the low bidder. There was further discussion. Councilor Morones made a motion to approve Bid #10/11-13 with staff's recommendation to award the bid to G J & L Construction, Inc. for a total plus gross receipts taxes of \$27,573.90. Councilor Bettison seconded the motion as stated. There was no further discussion. Councilor Bettison, Councilor Ray, and Councilor Morones voted aye. Councilor Thomson voted no. Motion passed with 3 to 1 in favor. Councilor Thomson said he voted incorrectly. Mayor Marshall asked the other members of the Council if they objected to Councilor Thomson's change of vote to aye. There was no objection. All were in favor, motion passed.

E. Approval / Disapproval of Bid #10/11-14: Homeowner rehabilitation. Manager Brown presented the details of Bid #10/11-14, and he said they received bids from G J & L Construction, Anthony, NM and Chavez Plastering and Cement Construction, Silver City, NM. He said it was staff's recommendation to award the bid to G J & L Construction for a total amount of \$31,836.69. He said that they applied the 5% preferential requirement to the local bidder, but they were still not the low bidder. Councilor Bettison made a motion to approve Bid #10/11-14 to staff's recommendation of G J & L Construction for a total plus gross receipts taxes of \$31,836.69. Councilor Morones seconded the motion as stated. All were in favor, motion passed.

F. Approval / Disapproval of Bid #10/11-15: Fuel services. Manager Brown presented the details of Bid #10/11-15 and stated that they received 1 bid from W & N Enterprises, doing business as Snappy Mart. He read the bid prices as follows: diesel - .1300 cents over rack; unleaded gasoline - .3100 cents over rack; unleaded plus gasoline - .3100 cents over rack; and unleaded supreme gasoline - .3100 cents over rack. There was further discussion about verifying the rack prices periodically. Councilor Bettison made a motion to approve Bid #10/11-15 to staff's recommendation to W & N Enterprises, Inc., doing business as Snappy Mart, and with direction to the Town Manager to verify rack prices at his discretion. Councilor Ray seconded the motion. All were in favor, motion passed.

G. Approval / Disapproval of Addendum No. 1 to the July 1, 2010 to June 30, 2012 Agreement between the Town of Silver City and the Fraternal Order of Police, Silver City Police Officers Association. Manager Brown stated the Police Officers Association contract allowed for annual negotiations for money matters. He said they had negotiations and it was his recommendation to award them a 4% pay increase effective July 1st, and that it was already included in the budget that was being presented. Mayor Marshall said he was happy that they were in a position that they could offer them an increase. Manager Brown said they had 3 unions (AFSCME, Police and Fire) and the exempt employees, and that every one of those groups of employees had been helpful in working with them through the hard times. There was no further discussion. Councilor Ray made a motion to approve Addendum No. 1 of the July 1, 2010 to June 30, 2012 Agreement for a 4% salary increase. Councilor Morones seconded the motion. All were in favor, motion passed.

H. Approval / Disapproval of Resolution No. 2011-18: a Resolution regarding sanitary sewer rates. Manager Brown presented the details of the Resolution and stated that per the ordinance governing sewer and wastewater rates he had to annually review and ensure that the rate being charged would cover the operational costs. He said the Resolution would amend the rates, and Appendix A should be amended to reflect the increase of the wastewater rate from \$1.86 per 1,000 gallon back to \$1.80 per 1,000 gallon. He said he would bring an ordinance to the next council meeting that would impose an increase to the septage receiving station from 1-2 cents per gallon. He provided further details and there was further discussion. Councilor Bettison made a motion to approve Resolution No. 2011-18 and to amend the wastewater rate in Appendix A from \$1.86 to \$1.80. Councilor Ray seconded the motion. A roll call vote was taken with the following results: Councilor Bettison - aye; Councilor Thomson - aye; Councilor Ray - aye; and Councilor Morones - aye. Motion passed.

I. Approval / Disapproval of Resolution No. 2011-17: approval of Preliminary Budget for Fiscal Year 2011-2012. Manager Brown stated that in the last 2 months he had made 2 presentations on the proposed budget to the Town Council. He said that he would be presenting the same information to them as the last Council meeting, but there were

2 changes. He said the first change was that he increased the gross receipts revenue projections which did affect the General Fund, the Water / Sewer Fund, the Sanitation Fund, and the Public Safety Fund. He said the revenue projection was increased because the realized revenues were higher so he was more confident that next year's revenues would be stronger than projected. He said the second change was that he included \$120,000 for work at the old landfill for the methane issue in order to move the monitoring well, to resurvey the boundary lines, and to do venting. He said the \$120,000 would not be a reoccurring cost. He said the work that they would be doing would actually decrease the amount of monitoring that they had to do on an annual basis. Councilor Bettison asked if a position was being added for the marketing of the Town. Manager Brown said it was in the budget, but he would wait for the Council's direction on how to proceed with it. He said the position would come out of the General, Water / Sewer, and Sanitation Funds since it would be marketing the Town. He said there was \$250,000 available for the lodgers tax awards. Councilor Bettison commended the Town Manager and his staff for the ability to budget. She commented that the Town Manager, staff and the Council worked together to ensure that the Town had funds and were not placed in a position that other municipalities were placed in. There was further discussion. Councilor Morones made a motion to approve Resolution No. 2011-17. Councilor Bettison seconded the motion as stated. A roll call vote was taken with the following results: Councilor Morones - aye; Councilor Ray - aye; Councilor Thomson - aye; and Councilor Bettison - aye. Motion passed.

J. Approval / Disapproval of the re-scheduling or cancellation of the regular Town Council meeting scheduled for June 14, 2011. Mayor Marshall stated that he would be in D. C. on June 14th and Councilor Bettison had an out of town meeting on June 15th so he suggested moving the meeting date to June 13th if the meeting room was available. Councilor Ray made a motion to approve re-scheduling the regular Town Council meeting scheduled for June 14th to June 13th if the facilities were available. Councilor Morones seconded the motion as stated. Mayor Marshall asked the Council to amend the motion to authorize him to work with the clerk to find a date and time in order to make sure business did not get dropped. Manager Brown mentioned that he would present an ordinance at the next Council meeting. There was further discussion. Councilor Ray and Councilor Morones agreed to the friendly amendment to the motion. Councilor Thomson and Councilor Bettison concurred. All were in favor, motion passed.

12. ADJOURNMENT – Councilor Bettison made a motion to adjourn at 7:50 p.m. Councilor Ray seconded the motion. All were in favor. Motion passed.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk