

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY  
REGULAR COUNCIL MEETING  
Grant County Administration Center, 1400 Hwy 180, Silver City, NM  
October 11, 2011, 6:00 P.M.**

**Present:**

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

**Also Present:**

Yolanda C. Holguin, Acting Town Clerk  
Anita Norero, Purchasing Agent  
Rudy Bencomo, Fire Chief

**1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:01 p.m. Councilor Thomson read the Town’s Mission Statement.

**2. CEREMONIES** – None.

**3. PROCLAMATIONS -**

**“Pro Bono Week”, October 23-29, 2011** - Mayor Marshall read the proclamation and presented it to Barbara Raif with Legal Aid. Ms. Raif stated that a celebration event would take place on October 26, 2011, at the Grant County Business and Conference Center presented by local attorneys on various areas of the law, and a free 15 minute private consultation would be provided by the New Mexico Legal Aid and the local bar. Ms. Raif thanked Judge Quintero for spearheading the Pro Bono participation in the community. Mayor Marshall stated that Ms. Raif was a caring and confident attorney and did a great service for Grant County.

**“Walk and Bike to School Month”, October 2011** – Mayor Marshall read the proclamation and presented it to Priscilla Lucero, Executive Director of the Southwest New Mexico Council of Governments. Ms. Lucero stated that transportation needed to be looked at from a multi-modal aspect. She thanked the children, the Mayor, the Council, and the Silver Schools for their participation and effort. Councilor Thomson stated that it was a great opportunity for all agencies involved and he talked about the pedestrian bridge project by the Jose Barrios School.

**“Fire Prevention Week”, October 16-22, 2011** – Mayor Marshall read the proclamation and presented it to Fire Chief Rudy Bencomo. Chief Bencomo introduced 2<sup>nd</sup> Lieutenant, Aric Ray and Driver-Engineer, Michael Davila. Lt. Ray, Fire Prevention Coordinator, stated that “Fire Prevention Week” was moved up a week to accommodate school children that were on Fall break. He gave statistics on the number of structure fires and fatalities and talked about having a simple implementation fire escape plan in place. He talked about the up-coming events; the importance of children becoming familiar with fire protection gear; and that “Sparky” had a new suit.

**4. PUBLIC INPUT** – Susan Aumann stated that she would be petitioning Governor Martinez to appoint her to the InterState Stream Commission committee to represent the southwest area. She stated that she would be circulating the petition and her goal was to get 5,000 signatures. She stated that the walk to the Recreation Center was very difficult and concluded with, “Let’s win the chicken war”. Cissy McAndrew, Executive Director of the Southwest New Mexico Green Chamber of Commerce and the Public Relation Director for the Town of the Silver City’s Visitors Center, stated that the Green Chamber took over the management on August 1, 2011. She reported on the number of visitors for August and September; the revision of the brochure for the community guide; that there were 17 volunteers; and the positive response from businesses and the community. She thanked the Town for their support.

**5. COUNCIL COMMENTS** – Councilor Ray commented on how the speed bumps installed on Cooper Street had helped to slow down the traffic; encouraged the public to have their fire alarms checked; and the scheduled meeting at the Senior Center to discuss walkways and bike pathways. Councilor Thomson commended the judges and lawyers that would participate in the Pro Bono Week. Councilor Bettison commented on the inauguration of the Western New

Mexico University President, Dr. Joseph Shepard, and that she was looking forward to working together to transform the future. Mayor Marshall commented on the final negotiations of the Power Purchase Agreement for the solar project at the Wastewater Treatment Plant; the three franchise agreements that would be coming before the Council; and the meeting with a vendor in reference to performance bonding.

**6. CHANGES TO THE AGENDA – None.**

**7. APPROVAL OF THE MINUTES –Regular Meeting, September 23, 2011 -** Councilor Bettison made a motion to approve the minutes as presented. Councilor Ray seconded the motion as stated. All were in favor, motion passed.

**8. REPORTS –**

**A. Silver City Waterworks Building by Nancy Gordon.** Ms. Gordon thanked the Mayor and Council for the opportunity to talk about the Waterworks Building. She gave a brief history of the building, and reported on the recent projects and possibilities for its future. She stated that the building represented the history of water in Silver City. She discussed how the water system worked and how it was still pumped through a fire hydrant. She talked about the repairs needed for the building; the recent activities to the yard and building; the grants awarded for studies and building repairs; and that the building was listed on National Register of Historic Places. She stated that there were 70 volunteers and 900 hours worked for the Community Service Program and that the project goal was exceeded. She discussed the Town’s options for the building; the existing 18 acre-feet of water rights; and ended with a video of former Museum Director, Susan Berry, that was an inspirational message of the Waterworks Building.

Chief Bencomo reminded the Council that it was “Breast Cancer Awareness” week and that the firefighters would be using pink t-shirts in support of awareness. Michael Davila, Driver-Engineer, informed the Council of the “Fill the Boot” campaign. He stated that it was a nation-wide fund raiser for the Muscular Dystrophy Association and that the Fire Department had participated for the past 15 years. He talked about what the funds were used for; the amount of monies raised; and thanked the public for participating.

**9. PUBLIC HEARINGS – None.**

**10. UNFINISHED BUSINESS**

**A. Approval / Disapproval of Notice of Intent Ordinance No. 1186: an Ordinance amending Municipal Code Chapter 2, Article II (Elections), Section 2-50 (b)(1-4) reorganizing existing Town Council districts of the Town of Silver City. (Plan A-1).** Denise Rinehart of Research and Polling Inc., discussed how the Town Council was districted as single member districts; that every ten years after the census the districts were revisited to make sure of equal population which drove the need to redistrict; and that the Town’s districts were out of deviation, but they were allowed to do a plus or minus 5 percent. She stated that the current numbers of District 2 was 12 percent too small; District 1 was okay; District 4 was right on; and District 3 was a little bit larger. She stated that Plan A-1 came from the Town’s mapping department and that it was a very status-quo oriented plan and minimized the number of blocks that were moved to make the population numbers work, and that the constituents would stay the same. She stated that the total deviation was 7.7 percent; that District 4 was majority voting age Hispanic at 58.8 percent; District 1 and 3 were majority minority districts with voting age white population below 50 percent; and that District 2 had 34.1 percent voting age Hispanic and 60.2 percent non-Hispanic white population. She stated that Plan B was very different than the current districts; that District 2 would look the same; that District 1 looked like an inter-city district; that District 4 would become a northeast district; that District 3 would be the southern district without the far northeast part; that the total deviation for Plan B would be a 5.8 percent; that District 1 and 4 would be majority Hispanic voting age population; that District 2 would be 56.6 percent non-Hispanic white; and that District 3 would be majority minority with 46.8 percent non-Hispanic white. Councilor Thomson stated contiguousness was critical and asked if she had a number for the relative interior edge. Ms. Rinehart stated that the software usually did not calculate the contiguity measure and the compactness measure, and gave an example on the current plan and that Plan A-1 ensured the spirit of contiguity under the principals of redistricting and that she was satisfied that it met the contiguity requirement.

Mayor Marshall commented that the next item on the agenda was for Notice of Intent Ordinance No. 1187 for Plan B, and that if anyone in the audience wanted to make points on Plan A-1 or Plan B to come forward. Dr. Magdaleno Manzanarez said he was speaking as a Hispanic citizen of Silver City and stated that both plans could be fair at face value but that his preference would be Plan A-1. He stated that it offered the best possibility of the two plans; that at least one Hispanic could be elected to the city council; that it offered a more egalitarian outcome in terms that the two demographic ethnic groups would be represented; and that he liked the totality that the plan offered. Dr. Arthur Martinez stated that he came to receive all assurance possible in public forums to see that the redistricting options that remained would fall within the allowance of the 5 percent variance for all of the cultural communities. He said that he also wanted to receive assurance that the districts would meet all of the legal requirements of being reasonably compact, and he agreed that it was. He talked about the need to meet the best interest for all of the communities in Silver City, about how the U.S. law prohibited the diluting of minority voting strength, and he stated that was not happening. He stated that they needed to continue to work positively together so that everyone in the community would have their fair share of equity. He stated that the two plans were good, but he was inclined to the positive possibilities in Plan A-1.

Councilor Morones commented that the two plans looked fair and met the many attributes that they were looking for. He stated that visually he favored Plan B and liked the fact that there were three districts with 18 plus voters that were Hispanic in the majority. He talked about voter turn-out and voting records of different groups of people. He stated that Plan A-1 was the safe bet based on historical voting trends on the different groups of people. Councilor Bettison stated that she favored Plan A-1 for the reason that it was fair at face value. She talked about the different groups in the town reference a group having a higher percentage of voter turn-out than another, and that Plan A-1 would assure that District 4 could elect from a community of interest like District 2 could. She commented on her conversation with former Mayor Steve May who was Mayor during the time of the original districting and how his recollection was that the districts as they currently stand and as were slightly changed in Plan A-1, that there had not been much change to ensure that communities of interest had the opportunity to vote for somebody from their community. She said that was also her reason for supporting Plan A-1. She stated that she was concerned about Plan B because there was no offset to District 2 where there is an assurity based on the numbers that a white non-Hispanic would potentially be elected from that district. She stated that she was in favor of Plan A-1 because it was more fair in terms of numbering. Councilor Thomson stated that there was quite a bit of variability within the categories that had to be used. He was concerned about the edge which represents in geography places where neighborhoods were broken up when a district would be divided in a street. He stated that the numbers were comparable in both plans but he favored Plan B because of his interest in neighborhoods and that the more interior edge you have then the more disruptive to the neighborhood the districting would be. Councilor Ray stated that he liked both plans and that he was inclined to go with Plan A-1.

Councilor Bettison made a motion to approve Notice of Intent Ordinance No. 1186 (Plan A-1). Councilor Ray seconded the motion. Mayor Marshall commented on the day that they would not have to address issues based on race; that it would be pleasant to sit there and address each other as equals; that the community was 100 plus years old and had natural communities built within them; and that they were 315 people away from not having districts and could have everyone elected at large. He stated that he hoped that it would one day be one person for one vote and that issues would be considered on equality. He stated that the Council represented the Town and all districts, and that very few votes came to the Council that were district specific. He stated that both plans were fair. The vote was as follows: Councilor Bettison – aye; Councilor Thomson – nay; Councilor Ray – aye; and Councilor Morones – aye. Motion passed.

**B. Approval / Disapproval of Notice of Intent Ordinance No. 1187: an Ordinance amending Municipal Code Chapter 2, Article II (Elections), Section 2-50 (b)(1-4) reorganizing existing Town Council districts of the Town of Silver City. (Plan B).** Mayor Marshall stated that both were a notice of intent to adopt. Councilor Morones stated that he would not mind soliciting more public input on both plans that would motivate any other changes. Councilor Morones made a motion to approve Notice of Intent Ordinance No. 1187 (Plan B). Councilor Ray seconded the motion. Mayor Marshall commented that the plans would remain on the table until final passage; that the public would have the opportunity to provide comment and consider both plans; that due diligence should be given to all options; and that the final decision would last for ten years. All were in favor. Motion passed.

Councilor Bettison made a motion to take a short break at 7:11 p.m. Councilor Ray seconded the motion. All were in favor. Motion passed. Mayor Marshall called the meeting back to order at 7:27 p.m.

## **11. NEW BUSINESS -**

**A. Approval / Disapproval of Notice of Intent Ordinance No. 1189: an Ordinance amending Appendix C (Land Use and Zoning code of 2010), Article VI (Administration), Section 6.1.1 (Planning and Zoning commission of the Town of Silver City Municipal Code.** Mayor Marshal stated that the Notice of Intent Ordinance would re-insert the Planning and Zoning Commission and all of the pertinent issues that were left out by error, and it would leave the commission at seven members. Councilor Bettison made a motion to approve Notice of Intent Ordinance No. 1189. Councilor Morones seconded the motion as stated. All were in favor. Motion passed.

**B. Approval / Disapproval Resolution No. 2011-34: a Resolution to re-purpose 11<sup>th</sup> Street right-of-way from a roadway to a public parking area.** Jim Coates, Planner/Zoning Administrator with the Community Development Department, presented the details of the Resolution. He stated that the Town owned the property and that the purpose of the Resolution was to ensure adequate parking on site for the two Hidalgo Medical Services' facilities to include staff and clientele. He stated that there would be pedestrian crossings and that traffic would be slowed down. He stated that it would be in the best interest of the Town not to vacate, but to maintain it as a public parking area. Mr. Coates addressed questions that the Council had in reference to the right-of-way; through traffic; two-way traffic; and time for the public to be re-learned on the change in reference to speed. Mr. Coates stated that the area residents and Mr. Billings' concerns were satisfied. Councilor Morones made a motion to approve Resolution No. 2011-34. Councilor Bettison seconded the motion as stated. 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.

**C. Approval / Disapproval of Notice of Intent Ordinance No. 1188: an Ordinance amending Chapter 6, Section 6-1 (Definitions), Section 6-4 (Keeping of dogs and cats), Section 6-6 (Keeping of cattle, horses, fowl or livestock restricted), Section 6-55 (Citations; Contents), Section 6-56 (Failure to pay penalty assessment or correct violation), Section 6-78 (Annual license; permit) of the Town of Silver City Municipal Code.** Councilor Morones gave a brief description of the work that he and Councilor Bettison had done and that a lot of research and public input was needed. He stated that they were looking at areas that needed improvement such as administrative enforcements and warnings to correct a problem or issue to help good law-abiding citizens and animal owners avoid breaking the law; property owners utilizing their land within the law; and protecting their neighbors of undue nuisances that were not addressed in other ordinances. Councilor Bettison stated that before amending or developing an ordinance that there was a need to identify the needs within the community. She stated that some companion animal owners did not think of a cat the same as a dog; that some citizens did have three companion animals; and that the proposed ordinance did not assure that a citizen could have three companion animals if they were in violation of the noise ordinance; and that a change in the numbers of animals did not eliminate or change the noise ordinance. Councilor Bettison talked about the desire of citizens to have chickens within city limits; how citizens accepted and tolerated their neighbors with chickens; and the need to consider all residents. She commented on the livestock portion that was placed in it to assure that the new Land Use Code and animal ordinance were parallel in nature, the need to correct animal license fees, and the in-depth research that they had done. Councilor Morones stated that the biggest change was to allow chickens and that they extended their research to other officials, municipalities, and animal control officers, and that many of their concerns had been addressed.

Mayor Marshall stated that a separate sign-up sheet was provided for the Notice of Intent Ordinance No. 1188 and that those who signed-up would speak first and then anyone else could. William Joseph, a property owner, commented that he was not against having chickens in the city limits, but he was against the irresponsible owners of chickens who were not concerned about their neighbors. He commented on the issue of routinely dealing with violators; what the different zonings meant; how if the ordinance passed, the fees would need to be increased; the need of hiring another animal control officer; how chicken owners needed approval from neighbors; cautioned the Council not to get tangled in a news article; and asked if the question of H5N1 had come up. Susie Sidentop commented on the article in the newspaper in reference to not facing the chicken issue before; the overworked animal control officer not looking for animal violations; and that the animal and noise ordinance put the burden of responsibility on the victim, not the perpetrator. She stated that increasing the number of animals would be going backward and was asking for trouble. She

asked the Council to think and act logically to protect the citizens and animals by changing the laws pertaining to chaining, neutering, back-yard breeding, adequate food and shelter, and not numbers. She stated that the quality of life was a very important issue. Others attending the meeting commented on the food security issue for their families and the community; considering the issue on a nuisance basis neighbor-to-neighbor rather than prohibiting these animals; that the amount of four chicken was not adequate; that chickens did have benefits like pest control and compost; agreed with the idea of a warning system instead of being cited; not being aware that chickens were not allowed; neighbors not complaining if they had chickens; helping and sharing their ideas with the Council; the ordinance process; working on the complete animal ordinance and how it would change this one; the proposed ordinance requiring screening; feeding chickens scraps and the smell that comes with it; considering all of the valid opinions; having misunderstandings about chickens; questions on the license fees; providing the Council with the details on the food security issue and how to address it; forwarding public input to the town clerk; that the proposed ordinance was a draft; and that there had not been a case of H5N1 in the United States.

The comments continued as follows: being persecuted not by complaints, but by the animal control officer; communicating with neighbors if there were complaints; talking and being friendly with your neighbors; those not being able to be in compliance with the proposed ordinance due to income; providing for oneself in their own land; adding chickens to the mix would add more problems because of predators; not encroaching in one's quality of life by adding chickens; the concern that the Council would consider adding more animals to a city ordinance; educating the public on what it would do to their neighbors; having chickens being a part of one's quality of life; chickens taking care of food waste and cockroach problems; the fact that if a neighbor complained about a rooster that the rooster would be removed from the area; producing protein for oneself by having chickens; the proposed ordinance prohibiting feeding chickens food scraps; legislating and enforcing by nuisance and humane treatment of animals and not by numbers; increasing fees to address dog issues; research supporting sustainability and food issues; introduction of small flocks in backyards; having rights to the property owned without interfering with their neighbor's right; creating a form to be completed by people if their neighbor's animals were a nuisance; not legislating more, but having the freedom to live their lives; that it was a liberties and esthetics issue; that chickens contribute to the good of the public; that the nuisance issue was very elegant; people's concern on factory farming; being fair and equitable between chickens and dog and cat owners; defending the newspaper in reference to the good article regarding chickens; that the best way to solve an issue was by communicating; that chickens kept down the flies; and how the proposed ordinance would not allow slaughtering in town limits.

Councilor Bettison made a motion to take a short break at 8:56 p.m. Councilor Ray seconded the motion. All were in favor. Motion passed. Mayor Marshall called the meeting back to order at 9:11 p.m.

Discussion continued on letting residents have whatever number of animals they wanted, but when there was a complaint the owner would have to get rid of the animal(s); that animals were great for children; and that feeding chickens food scraps would help with the landfill issue. All those that spoke on NOI Ordinance No. 1188 thanked the Council for listening to their concerns and questions, and their consideration of the public input.

Councilor Morones commented on the tremendous amount of questions and comments; reviewing the noise concern; being an active citizen and reporting violations; the limited resources that were available; if there was really support or opposition of the issue; having less than 1 percent of the population whose passion was on one side or the other; that there were people who just did not care; questions on adding so many rules on having chickens; chickens being a new issue and prescribing new care to mitigate the nuisance issue for neighbors and more humane treatment for the animals; moving quickly on the issue and not including dogs and cats, but addressing them in the future; not creating comprehensive changes that would not come before the Council any time soon; property owners' rights and those of their neighbors; the comments on encroachment and quality of life; the need of coming forward with future amendments to the ordinance; balancing your rights with respect to your neighbors rights; that the chicken scraps issue would need some debate; and the value of legislating the nuisance, not numbers. Councilor Thomson commented on the difficulty of building on an existing structure that had flaws; choosing to change the whole priority of the ordinance; looking at how to reduce the number of frustrations; putting all ideas together to come up with a solution that worked best for everyone; and that the amendment was a good start. Councilor Bettison reiterated what Councilor Morones stated. Councilor Morones stated that the NOI as it was written had his full support to move forward as an

appropriate amendment to address items that needed correction for specific issues that had come up, and that it would not fix everything, but would be a good start. Councilor Bettison stated that she agreed with Councilor Morones. Mayor Marshall stated that Section 6.6-6 #4-A should read “A household by permit . . .”. He commented that he agreed with legislating by nuisance and not numbers; that the Council was setting the standard; how more discussion was needed on the value of chickens versus dogs, cats, etc.; how he needed to be educated on the food security issue mentioned during public input because there were millions of acres available to grow food; how his 6 year effort with sustainability in the Town was to be less dependent on the corporate world; the cost of raising chicken as opposed to buying chickens and eggs at JD’s; on the numerous phone calls he received that were mostly animal issues and how they commented that the animal control officer was not addressing the issue; that there had to be a balance; that if it was not a nuisance why not stay out of it, but how it would put the burden on the one offended; how researching what other towns did was worthless because town after town in this state did not allow fowl and livestock of any kind; taking the balance of what other communities were doing or not doing and looking for what was best for Silver City; and how the public reacted strongly to chickens in a full house versus there being an empty room when the public did not react strongly regarding children and a daycare issue in Residential A.

Councilor Morones made a motion to approve Notice of Intent Ordinance No.1188 with the noted correction on Section 6.6-6 4A to read “A household be permitted...”. Councilor Bettison seconded the motion as stated. All were in favor. Motion passed.

**D. Approval / Disapproval of Bid #11/12-5: old landfill corrective measures.** Anita Norero, the Town’s Purchasing Agent, stated that three bids were received and that staff’s recommendation was to award the bid to Southwest Concrete and Paving, Inc. for \$227,359.57, with GRT of \$16,767.77 for a total project cost of \$244,127.34. Councilor Bettison made a motion to approve per staff recommendation. Councilor Morones seconded the motion as stated. Councilor Bettison stated that per Town Manager Brown the funds were budgeted in the Sanitation fund for the project. All were in favor. Motion passed.

**E. Approval / Disapproval of Bid #11/12-7: 2011 CDBG Colonias water system improvements.** Ms. Norero stated that two bids were received and that staff’s recommendation was to award the bid to J & S Plumbing for Bid Lot #1 - \$299,196.50, Bid Lot #2 – \$46,853.00, and Bid Lot #3 - \$16,603.00 with GRT of \$26,745.62 for a total project cost of \$389,398.12. Councilor Bettison made a motion to approve per staff recommendation. Councilor Ray seconded the motion as stated. Councilor Bettison stated that the Town received \$468,818.05 in the CDBG grant and per Town Manager Brown all funds were available, and no additional funds would be required. All were in favor. Motion passed.

**F. Approval / Disapproval of Bid #11/12-8: 10<sup>th</sup> Street realignment at Mountain View Road.** Ms. Norero stated that two bids were received and that staff’s recommendation was to award the bid to Southwest Concrete and Paving, Inc. for \$115,000.00, with GRT of \$8,481.25 for a total project cost of \$123, 481.25. Councilor Morones made a motion to approve per staff recommendation. Councilor Ray seconded the motion as stated. Councilor Morones noted that funds for the project would be paid through two grants. All were in favor. Motion passed

**G. Appointment of one member to the Silver City Veterans Park Advisory Committee.** Mayor Marshall stated that Mr. Cave was qualified to serve on the committee. He appointed Phillip Cave with no objection from the Council.

**H. Appointment of one member to the Museum Board.** Mayor Marshall stated that Mr. Hozid was not known but was very qualified to serve on the committee. He appointed Aaron Hozid with no objection from the Council.

**I. Appointment of one member to the Mayor’s Climate Protection Agreement Citizens Advisory Committee.** Mayor Marshall stated that Ms. Beckworth was qualified to serve on the committee. He appointed Mary Beckworth with no objection from the Council.

**J. Re-appointment of two members to the Historic Design Review Committee.** Mayor Marshall stated that Becky Smith and David Lawrence were duly qualified to serve on the committee. He re-appointed Becky Smith and David Lawrence with no objection from the Council.

**12. ADJOURNMENT** – Councilor Bettison made a motion to adjourn at 9:54 pm. Councilor Thomson seconded the motion. All were in favor. Motion passed.

/s/

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James R. Marshall, Mayor

Attest:

/s/

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Ann L. Mackie, Town Clerk