ORDINANCE NO. 1180

AN ORDINANCE AMENDING MUNICIPAL CODE CHAPTER 18, ARTICLE III. (FIRE CODE), §18–51 (d) BY ADDING A NEW SUBSECTION REGARDING RESTRICTIONS ON THE SALE AND USE OF FIREWORKS DURING PERIODS OF EXTREME OR SEVERE DROUGHT


WHEREAS, Section 60-2C-1 et seq., N.M.S.A. 1978, entitled “Fireworks Licensing and Safety Act” comprises the State of New Mexico’s regulation of the sale and use of fireworks; and

WHEREAS, said Act commands the State Fire Marshal to enforce the provisions thereof; thus recognizing that fireworks and the dangers associated therewith are matters directly relevant to fire control and to public safety, in general; and

WHEREAS, by virtue of Sections 3-17-1 et seq., and 3-18-1 et seq. N.M.S.A. 1978, the State Legislature has granted municipalities the power to define and abate nuisances, to pass ordinances providing for the health, safety and welfare of its inhabitants, and to take such actions as are necessary and proper to protect persons and property; thus recognizing that local government best knows of current and local conditions affecting its public safety; and

WHEREAS, Article IV, Section 5 of the Territorial Charter of the Town of Silver City specifically gives the Town Council the power, by ordinance, to make regulations to secure the general health of the inhabitants of the Town, and in Section 12 thereof to make all ordinances which shall be necessary or proper in carrying out its governmental responsibilities; and

WHEREAS, Article X, Section 6 D. and E. of the New Mexico Constitution references municipalities’ legislative powers and specifically states that “The purpose of this section is to provide for maximum local self government. A liberal construction shall be given to the powers
of municipalities”; and

**WHEREAS**, Section 60-2C-8.1 N.M.S.A. 1978 grants certain limited powers to municipalities to restrict the sale and use of fireworks during extreme or severe drought conditions upon hearing and subsequent issuance of a proclamation, but such restriction is limited and does not cover all fireworks, nor does it permit municipalities from banning the sale and use of all fireworks from all its territory in the interest of public safety; and

**WHEREAS**, Section 60-2C-8.1 of said Act places unreasonable limitations on New Mexico municipalities’ ability to generally regulate the sale and use of fireworks, notwithstanding local concerns for public safety, which limitations are a usurpation of local prerogative suggested by the New Mexico Constitution; and

**WHEREAS**, the Town Council of the Town of Silver City finds that the power and authority to proclaim extreme and severe drought and fire conditions and thereafter to impose reasonable restrictions on the sale and use of fireworks within the Town, including the total ban thereof, is necessary for the health, welfare, and safety of the Town and its inhabitants.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:**

**CHAPTER 18, ARTICLE III. (FIRE CODE), §18–51 (d)** is amended by adding a new subsection (d) (4), which shall state as follows:

Sec. 18-51 (d)(4)

Upon the recommendation of the Town’s Fire Chief and after consultation with the Town Manager, and upon consideration of evidence that a circumstance of great fire danger exists by virtue of extreme or severe drought presently existing, the Town Council may issue a proclamation declaring extreme fire danger due to severe drought conditions within the
boundaries of the Town. The proclamation shall describe the restrictions on the use and storage of incendiary devices, including the sale and use of flares and fireworks within the municipality. Such restrictions may include restrictions on the sale or use of any flare or firework deemed to be necessary for the protection of the health, welfare and safety of persons and property within the Town. A violation of the restrictions contained therein shall be punishable under the general penalty provisions of the Municipal Code.

Such proclamation shall be effective for thirty (30) days, unless shortened or extended by the Town Council after hearing.

**PASSED, ADOPTED AND APPROVED** by vote of the Council of the Town of Silver City, Grant County, New Mexico, this 26th day of July, 2011.

TOWN OF SILVER CITY

(Seal)

/s/

James R. Marshall, Mayor

ATTEST:

/s/

Ann L. Mackie, Town Clerk