

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
SPECIAL COUNCIL MEETING
City Hall Annex, 1203 N. Hudson St., Silver City, NM
January 12, 2012, 9:00 A.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:

Alex C. Brown, Town Manager-Finance Director
Robert L. Scavron, Town Attorney
Ann L. Mackie, Town Clerk
Ed Reynolds, Police Chief

1. CALL TO ORDER/PLEDGE OF ALLEGIANCE – Mayor Marshall called the meeting to order at 9:02 a.m.

2. DISCUSSION ONLY OF NOTICE OF INTENT ORDINANCE NO. 1191: AN ORDINANCE REVISING IN ITS ENTIRETY CHAPTER 6 (ANIMALS); SECTION 6-1 ET SEQ. OF THE TOWN OF SILVER CITY MUNICIPAL CODE. Mayor Marshall introduced Notice of Intent Ordinance No. 1191 and asked Councilor Thomson to talk to them about where they were at on it. Councilor Thomson said he talked to the City Attorney and that they needed to clarify some issues in the Ordinance. Mayor Marshall asked him if he had any intent to make any modifications on his own. Councilor Thomson said he did not have major modifications, but there were places for minor modifications for sure, i.e., the definition of service animal and the overall number of animals could be discussed, but it was not a major change. He said there was a point about not conforming with the Land Use Code; that they should both conform and were both living documents, and that the Land Use Code may need to be changed to conform with the animal ordinance. He said those items needed to be discussed as a group. He commented that he could not support an ordinance that would create problems in the future; on the redundancy between state law and local ordinances and having flexibility when the focus is on cruelty and violence; how the ordinance had a gradual response to every single problem; and how there was a clear delineation between the pathological problems that needed to be prosecuted and those that could be learned and changed. Mayor Marshall asked him to articulate the problem or to list the problems that he was trying to solve. Councilor Thomson said the biggest problem was that there were too many animals and that the expression of that problem was the number of animals being euthanized; the number of complaints; the nuisance issues; how the supply level with current demand level indicated that the value of those animals was very low and there was more neglect; how the expression of a neglected animal was barking and aggression; how it cost the city quite a bit of money to hire more officers; how they were targeting where people make decisions to get a dog, cat, puppies or kittens; and how they had a mechanism that allowed them to track the puppies and reduce the number of intact animals. He said the other main problem was what happened with the chickens; if they had ordinances that did not allow for certain behaviors, and there was no realistic reason for having those regulations, then frustration would come out of it. He asked for someone to explain to him why a single dairy goat would create more harm than a dog or he could not see how they could put that in an ordinance because they would have the same problems that they had with the chickens.

Mayor Marshall said it was definitely a philosophy change in the whole concept and many of the aspects of how it was written. He said that he was still puzzled and really curious and he asked Councilor Thomson if he had any idea of when the curve would change if the Ordinance was implemented completely. Councilor Thomson said one of the known unknowns was that the biological population that they were dealing with was Grant County and how the kittens and dogs were not solely generated within the Town limits. He said that he talked with the County Manager and he was interested in looking at a similar ordinance. He said if they would assume that the County created a similar market mechanism then the half life of the animals that were creating the nuisance was less than 5 years. He said the thing to remember was that his guess was that about 5 percent of the total animals were contributing 85 percent of the problems, and those animals tended to have a lower life span than those that were high valued so he imagined they would see an effect fairly fast. Councilor Bettison addressed Councilor Thomson and she said that he kept saying animals, but it was not the animals that caused the problem, it was the people that owned the animals that caused the

problem. She talked about how people could purchase animals elsewhere and bring them back to Silver City. She said she understood that the intent was to use a market mechanism to essentially change behavior, and currently the number of dogs and cats was limited to 2, but when people moved into the Town they could have 4 and be good owners and no one would know or complain. She said they could have puppies and could sell puppies and because no one knew there would be no complaints. She said she was not sure that the market mechanism would necessarily drive the behavior that he was seeking. Councilor Thomson said that was why they had 2 parts to the Ordinance and the first part was the market mechanism where it was absolutely obvious to everyone that it was easier not to have an intact animal, and throughout the process it was signaling that they were better off to have an animal that was fixed. He said Councilor Bettison was right that it was not sufficient. He said the second part was an emphasis on correcting behaviors incrementally so when there was a nuisance, instead of dictating an exact response they would expect a police officer or animal control officer to talk to the person and create a range of options that were available in order to make the situation better. He commented about how the Ordinance had an emphasis on learning; how the current Ordinance was complaint driven; how people would get upset and move into the County so the root problem of the human behavior was not addressed; how they never say ways to relieve the burden of animals; and how a community policing program would work with the owner to improve the problem incrementally. There was further discussion between Councilor Thomson and Councilor Bettison about how no one had to prove they had a license or permit in the Ordinance; intact animals and how they would only be known by complaints; how people do not neuter their animals; tracking animals; scenario of getting animals for the first time when family is stressed and they did not understand the commitment; how the Ordinance targeted humans through their initial mistake; how through market mechanisms they would see fewer dogs euthanized and have options for enforcement, etc.; and how if fewer animals were being euthanized then the opportunity for being adopted was higher. Councilor Thomson asked Councilor Bettison if she had another solution because they asked him to fix something. Councilor Bettison said there was an ideal and then there was reality, and that she was very pragmatic in terms of reality. He asked her how she would solve it, and she said she did not have a solution at the present time. He said that he had always asked everyone to give him a better solution.

Mayor Marshall said they should just get to the number and how it was not an easy question, but how one block with 8 houses could have 80 dogs, cats or whatever. He said he did not see any way possible that it met a lot of the issues that Councilor Thomson had spoken of in reducing the animals and increasing the value of animals, and how it would decrease complaints. He said he did not know if 2 were right, but he was confident that 10 were not. Councilor Thomson said he did not care what the number was, but there was logic to the reason for the 10 which was that it addressed hoarding specifically. He discussed the supply and demand curve and how they could allow as many animals as they wanted as long as they were not intact. There was further discussion about the issues with the number of animals allowed, etc., and how the most recent amendments to the animal ordinance included an administrative enforcement section to make sure that the animal control officer had the option to provide an option of a warning to do corrective action prior to going straight to citation. Police Chief Reynolds commented further on administrative enforcement options and inconsistencies between the NOI Ordinance and the Noise Ordinance regarding the animal barking issue. He asked that the Council to reconsider that section for the purpose of staying consistent with other ordinances. Councilor Bettison confirmed with Police Chief Reynolds that the section on barking could be removed from the NOI Ordinance since it was already covered under the Noise Ordinance. There was further discussion about redundancies between ordinances and state statutes. Mayor Marshall said he would like to remove the redundancy because it would breed conflict at some point, and how state law preempted their authority at the local level so it was a futile attempt to add it to the code when there was a preemption that could not be changed or managed. There was further discussion and Councilor Bettison said if anything was in state statute then the NOI Ordinance should refer back to state statute in order to cover all the points that were made and to ensure that the officers were covering state statutes as well as municipal ordinance. Police Chief Reynolds said that on page 48, Section 5.5 Cruelty to Animals, (C) they would not use it for enforcement because they would use city ordinance or state statute depending on the value of the animal. He referred to page 48, Section 5.5 Cruelty to Animals, (D) (5) regarding legal hunting practices as allowed by state wildlife authorities, and stated that under ordinance there was no discharge of firearms, bow hunting or anything within the city limits. Councilor Thomson said some of the hunting practices involved things that did not involve discharge, i.e., training of hunting dogs. He said they could strike it. Police Chief Reynolds said page 51, Section 5.10 Nuisances (B) Defecation/Urination was covered under the Nuisance Ordinance. Councilor Thomson said people would tend to go to the Animal Ordinance so that was why there was the redundancy, but he had no problem with referring it to the Nuisance Ordinance. Police Chief Reynolds referred to page 52 Section 5.11 Animal

Fighting and said it was in state statute, but he did not have a lot of heartburn with it being in the NOI Ordinance. Mayor Marshall said animal fighting and cock fighting were illegal in the state, but they had specific definitions in the NOI Ordinance, and he asked if all of the definitions should be removed with the local restriction language. Councilor Thomson said yes, if they removed the language in the Ordinance, then there was no need to have it in the definitions if the state already had it in their definitions. Mayor Marshall asked if animal fighting paraphernalia was in the state statute as well, and Police Chief Reynolds said yes. There was further discussion on the animal fighting definition and section. Police Chief Reynolds stated there was another redundancy on page 54, Section 5.16 Possession of False or Stolen Documents because it was in state statute and any documents produced by the humane society or by any licenses might be better suited in support of the state statute for forgery. He said the next one was on page 55, Article 6 Penalties, Section 6.1, second paragraph, to change “182 days or to the payment . . .” to “182 days and/or to the payment . . .” He also stated that another area of concern was that it may create a liability for the city to provide for the licensing of dangerous or potentially dangerous animals, and he explained the reasoning. There was further discussion about it and about wild and exotic animal permits, and how those types of licenses and permits were not conducive to the health, wealth, safety and welfare of the Town’s inhabitants.

Councilor Bettison made a motion for a brief recess at 10:14 a.m. Councilor Thomson seconded the motion. All were in favor, motion passed. Mayor Marshall called the meeting back to order at 10:31 a.m. Mayor Marshall said there were so many changes and amendments made that it would be good to continue to send feedback to Councilor Thomson so he could make the significant changes so it would be a similar, but different document. He said that there was normally time for the public to comment, but at that point the document was not ready for consideration so they were going to keep working on it for the next 30 minutes to make sure they would provide Councilor Thomson as much information as they could, and come to some consensus at some point. Police Chief Reynolds continued talking about potentially dangerous animals and how it was situational, i.e., when a dog protects its property and the officer had discretion in dealing with it. He commented about page 18, Section 3.7 Animal Care and Control Facilities (B) Animal Housing Facilities because currently the humane society only housed dogs and cats and that the section may need to be adjusted for cows or other exotic animals. He said if the Ordinance went through then it would dictate that they would have to build an additional facility or look for other avenues. He said the last thing to discuss was that the potential for additional expenditures was pretty good even if a portion of it went through, such as the application process, inspections, etc. He said that he anticipated having to hire 2 more animal control officers plus a part-time secretarial position to deal with it. He said the current animal control officer was making \$25,000 per year, not including benefits, so it would be an additional cost to the city, and they would have to pick up additional equipment. There was further discussion about how the Ordinance would create more work, increase costs, etc. Councilor Morones said they needed to consider increasing the budget of the animal control office either way, and he thanked Councilor Thomson for opening his eyes for many issues when philosophy was very important, profound, and interesting. He said he was not sure that it brought him to where he would support it over the current Ordinance or even put him on the fence, but it brought him to that fence looking at the other side. He said it brought a lot of attention to the current Animal Ordinance and comments from the public that showed a handful of things that needed to be done, i.e., the single point tethering, but the current Ordinance could be amended to fulfill that. He asked Councilor Thomson to consider an amendment to the current Ordinance to obtain greater success.

Mayor Marshall said Councilor Thomson still had the ownership of the document, and he had the rights and ability to amend it as he saw fit, that they were giving their individual philosophies and ideas on how to create a better document to help him, but the current meeting was informational only and only for discussion, and no decisions were made in the meeting. He said the opinion of the last person speaking was not the opinion of the entire body. He said he hoped to continue to work to improve the health, welfare and safety of their neighborhoods and pets.

3. ADJOURNMENT – Councilor Bettison made a motion to adjourn at 10:57 a.m. Councilor Morones seconded the motion. All were in favor. Motion passed.

Attest:

/s/
Ann L. Mackie, Town Clerk

/s/
James R. Marshall, Mayor