

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy 180, Silver City, NM
August 14, 2012, 6:00 p.m.**

Present:

James R. Marshall, Mayor
Cynthia A. Bettison, District 1
Pauline N. Hassler-Cook, District 2
Jose A. Ray, Jr., District 3
Michael S. Morones, District 4

Also Present:

Alex C. Brown, Town Manager-Finance Director
Ann L. Mackie, Town Clerk
Robert L. Scavron, Town Attorney
Jim Coates, Town Planner
Peter Russell, Community Development Director
Julianne Salaiz, Lead Code Enforcement Officer
Ed Reynolds, Police Chief

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Marshall called the meeting to order at 6:00 p.m. and Councilor Morones read the Town’s Mission Statement.
- 2. CEREMONIES** – None.
- 3. PROCLAMATIONS - "Grant County Senior Olympics Team"** - Mayor Marshall presented the proclamation to the Grant County Senior Olympics Team. Mario Quintana, Coordinator of the Team, presented medals and a plaque to the Town Council, and he and Raul Turrieta provided details of the Senior Olympics events. **"Joshua Shelley, Eagle Scout"** – Mayor Marshall presented the proclamation to Joshua Shelley and congratulated him for his accomplishment of achieving the Eagle Scout award.
- 4. PUBLIC INPUT** – None.
- 5. COUNCIL COMMENTS** – The Council commented on the following: thanks were given to Julie Salaiz and her crew for their work on Gold Street; how the Silver City Clay Festival was a phenomenal success and thanks were given to Lee Gruber, the sponsors, and collaborators; the National Night Out event and how the Silver City Police Department would work with neighborhoods to develop a neighborhood watch group; an upcoming Bash on Broadway event to welcome new and returning students of Western New Mexico University; thanks were given to Secretary Dominguez of the New Mexico Department of Transportation for responding rapidly to Mayor Marshall's letter about re-surfacing Hudson Street and to get the striping re-done; an announcement by PNM that the Silver City Payment Center would only be open on Mondays and Tuesdays beginning September 17th; and the installation of new traffic lights at 12th and Pope Streets.
- 6. CHANGES TO THE AGENDA** – None.
- 7. APPROVAL OF THE MINUTES – Regular Meeting July 24, 2012** – Councilor Bettison moved to approve the minutes of the Regular Meeting of July 24, 2012. Councilor Ray seconded. Mayor Marshall stated there was a motion and a second to approve the minutes of the Regular Meeting of July 24, 2012. He asked if there was any discussion, and there was none. He asked all those in favor to say aye, and all 4 Councilors voted aye. He asked if any were opposed, and there were none. Motion carried.
- 8. REPORTS** – Mayor Marshall asked Police Chief Reynolds to introduce Kim Porter from Safety Counselling, Inc. to discuss issues with distracted driving. Ms. Porter said the federal government was considering passing a law so that no one could be either on a hands-held or hands-free cell phone while driving a vehicle; and how 25-30% of all fatal accidents in motor vehicles were the result of distracted driving and that cell phone use was the number one distraction, etc. There was further discussion with the Council.

A. Update on the implementation of the Town's Climate Action Plan (2011 progress) and report on the Town's water and electric usage in 2010 and 2011 by members of the Mayor's Climate Protection Agreement Citizens Advisory Committee. Shelby Hallmark and Denise Smith provided an update on the Climate Action Plan's 13 goals established by the Committee in 2008 to reduce greenhouse gas emissions by the Town government and in the community by 15 percent by 2015. They said that 4 goals had been met, 5 goals had been partially met, and 4 goals had made no progress. They reviewed the next steps for the Committee.

Councilor Bettison moved for a short break at 6:51 p.m. Councilor Cook seconded. Mayor Marshall said there was a motion and a second for a short break and asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. Mayor Marshall called the meeting back to order at 7:08 p.m.

9. PUBLIC HEARINGS –

A. Approval / Disapproval of Ordinance No. 1206: an Ordinance Amending the Town's Official Zoning Map by rezoning from their current zoning to Historic Downtown Commercial numerous tracts of land in the Silver City, Chihuahua Hill, Black's Addition, and North Addition historic overlay districts. The map amendment/zone change included the following properties:

- all of Blocks 8, 19, 20, 31, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 91, 92, 93, 94, 95, 96, 97, 98, 105, 106, 127, 128, 141, 142, 163, 164, 179, 180, and 200 of the Fraser Survey of the Town of Silver City;
- Block 9, exclusive of the vacated portion of Bullard Street, of the Fraser Survey of the Townsite of Silver City;
- the south half of Blocks 99, 100, 101, 102, 103, and 104 of the Fraser Survey of the Townsite of Silver City;
- the east half of Blocks 7, 10, 18, 21, 30, 104, 129, 140, 165, 178, and 201 of the Fraser Survey of the Townsite of Silver City;
- the north half of Blocks 26, 27, 28, 29, and 30 of the Fraser Survey of the Townsite of Silver City;
- the northwest quarter of Block 178 of the Fraser Survey of the Townsite of Silver City;
- those parcels in the southeast portion of the rezone area, within an area of the Fraser's Survey of the Townsite of Silver City delineated on the north by Spring Street, on the west by Bullard Street, on the south by a line extending from the south side of San Vicente Street, and on the east by a line extending from the east side of Main Street, such parcels being those with the following Grant County, NM, Property Codes: 3-081-103-198-375, 3-081-103-192-377, 3-081-103-202-379, 3-081-103-208-382, 3-081-103-202-384, 3-081-103-205-388, 3-081-103-196-399, 3-081-103-206-401, 3-081-103-196-412, and 3-081-103-193-425;
- all of Blocks 1 and 44 of Black's Subdivision; and
- the south half of Blocks 2 and 45 of Black's Subdivision.

The applicant was The Town of Silver City.

Mayor Marshall read the agenda item description for the public hearing, and stated 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 matter, 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 2 witnesses for the hearing. Mayor Marshall read the procedures of how the hearing would be conducted. Jim Coates, Town Planner, presented the details of the staff report for the zone change request and said that during the June meeting of the Planning and Zoning Commission they found that Findings #1, 2, 4, and 7 all met the conditions for recommending to the Council that the proposal be approved. He and Peter Russell, Community Development Director, answered questions from the Council and there was further discussion. Mr. Coates also represented the applicant, the Town of Silver City, and he addressed some of the comments made during the discussions. Mayor Marshall asked him if that concluded his case, and Mr. Coates said yes. Mayor Marshall asked if there was anyone in opposition to the application, and there was no opposition. He asked Mr. Coates if there was anything else that he would like to reflect in the record, and Mr. Coates said no. Mayor Marshall asked if anyone from the hearing board had questions, and no one did. He asked them for a motion. Councilor Ray made a motion to approve Ordinance No. 1206 and he read the agenda item description and said it would be under Finding #1 that the proposed amendment was in substantial compliance with the Town's Comprehensive Plan. Councilor Morones seconded. Mayor Marshall said there was a motion as published, and a second, and he asked for discussion. There was no further discussion. He said there was a motion and a second and no discussion to approve

Ordinance No. 1206 as published, and as read with Finding #1. He asked for a roll call vote. Councilor Morones voted aye; Councilor Ray voted aye; Councilor Cook voted aye; and Councilor Bettison voted aye. Motion carried.

10. UNFINISHED BUSINESS -

A. Approval / Disapproval of Ordinance No. 1207: an Ordinance amending Section 12-6-12.18 (Prohibited Activities While Driving) of the New Mexico Uniform Traffic Code adopted as the Silver City Traffic Ordinance in Chapter 50, Section 50-1, of the Municipal Code of the Town of Silver City, NM. Councilor Ray said that he studied the measures of using cell phones while driving or texting and that he believed it was not in the best interest of the public to be doing it. He said that he had reports from other cities in New Mexico. He proposed changes to the NOI, Section 12-6-12.18 (6) and he read the revised paragraph and made a motion to amend it as follows, "Drive a motorized or manually powered vehicle while dialing, talking or entering data into a hand-held cellular device or radio telephone, or reading data therefrom, while the vehicle is in motion upon a street or roadway within the Town. Calling 911 while driving in order to request roadside assistance or to report an emergency or crime being committed shall be exempt from this regulation. Use of a hand-free communication device whose operation does not require manual dialing nor manual data input while driving shall also be exempt." Mayor Marshall asked if there was a second to his motion to amend NOI No. 1207. Councilor Cook seconded. There was further discussion on the amendment to the NOI. Mayor Marshall read the amendment again and asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried to amend the ordinance. Mayor Marshall said they were back to the ordinance with the new language and he opened it up to the audience and 5 individuals spoke in favor of it. Police Chief Reynolds said he supported the amendment, and he provided information and addressed some of the concerns. There was further discussion. Councilor Cook made a motion for recess at 8:43 p.m. Councilor Bettison seconded. Mayor Marshall said there was a motion and a second for a recess. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if there were any opposed and there were none. Motion carried.

Mayor Marshall called the meeting back to order at 8:57 p.m. Discussions resumed. Councilor Bettison moved to amend Ordinance No. 1207, (6), to the following, "Drive a motor vehicle or bicycle while dialing or entering data into a hand-held cellular device or radio telephone or reading data therefrom, while the vehicle is in motion upon a Town street or roadway. Calling 911 while driving in order to request roadside assistance, to report an emergency or crime being committed shall be exempt from this regulation. Use of a hands-free communication device whose operation does not require manual dialing nor manual data input shall also be exempt." Then she changed the first part to read, "Drive a motorized or manually powered vehicle . . ." She said her motion was to amend the amended NOI. Mayor Marshall read Councilor Bettison's motion to amend the amendment of the NOI. Councilor Bettison made another adjustment to her amendment, and read it as follows, "Drive a motorized or manually powered vehicle while dialing or entering data into a hand-held cellular device or radio telephone or reading data therefrom, while the vehicle is in motion upon a street or roadway within the Town. Calling 911 while driving in order to request roadside assistance, to report an emergency or crime being committed shall be exempt from this regulation. Use of a hands-free communication device whose operation does not require manual dialing nor manual data input shall also be exempt." Then she read it again with another change and dropped the last sentence. Mayor Marshall asked for a second. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to amend the amended NOI and he read Councilor Bettison's last version of her motion as follows, " Drive a motorized or manually powered vehicle while dialing or entering data into a hand-held cellular device or radio telephone or reading data therefrom, while the vehicle is in motion upon a street or roadway within the Town. Calling 911 while driving in order to request roadside assistance, to report an emergency or crime being committed shall be exempt from this regulation." There was further discussion and Attorney Scavron commented on removing "hand-held" from the first sentence. There was further discussion and Councilor Bettison said she was fine with his suggestion and the friendly amendment was agreed upon by Councilor Bettison and Councilor Morones. Mayor Marshall added that #611 would report a D.W.I., and Councilor Bettison said she would like to add #611 to it if Councilor Morones would accept the change. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to amend the amended NOI Ordinance No. 1207, (6), to read, "Drive a motorized or manually powered vehicle while dialing or entering data into a cellular device or radio telephone, or reading data therefrom, while the vehicle is in motion upon a street or roadway within the Town. Calling 911 or #611 while driving in order to request roadside assistance or to report an emergency or crime being committed shall be exempt from this regulation." He asked all those in favor to say aye. Councilor Bettison, Councilor Cook, and Councilor Morones said aye. He asked if any were opposed, and Councilor Ray said no. Mayor Marshall said the

motion carried 3 to 1. Mayor Marshall said there was an amended NOI Ordinance No. 1207 and asked if there was any further discussion. There was none. He asked for a motion. Councilor Bettison moved to approve Ordinance No. 1207 twice amended to read, "(6) Drive a motorized or manually powered vehicle while dialing or entering data into a cellular device or radio telephone, or reading data therefrom, while the vehicle is in motion upon a street or roadway within the Town. Calling 911 or #611 while driving in order to request roadside assistance or to report an emergency or crime being committed shall be exempt from this regulation." Councilor Morones seconded. Mayor Marshall said there was a motion and a second to approve Ordinance No. 1207 as twice amended, and asked if there was further discussion. Councilor Morones commented. Mayor Marshall asked for a roll call vote. Councilor Bettison voted aye; Councilor Cook voted aye; Councilor Ray voted no; and Councilor Morones voted aye. Motion carried 3 to 1.

11. NEW BUSINESS -

A. Approval / Disapproval of Special Dispenser Permit Application for a concert event sponsored by Q's Southern Bistro on Pope Street on Sept. 1, 2012 from 4:00 p.m to 11:00 p.m. License Holder: Yesterdays Enterprises Inc., Owner: Lillian and Mark Grady, 2800 Pinos Altos Rd., Silver City, NM. Anthony Quintana of Q's Southern Bistro provided the details of the event. Councilor Ray moved to approve and he read the agenda item description. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to approve and there was further discussion. Mayor Marshall said there was a motion and a second to approve a Special Dispenser Permit Application for a concert event sponsored by Q's Southern Bistro on Pope Street on Sept. 1, 2012 from 4:00 p.m. to 11:00 p.m. License Holder: Yesterdays Enterprises Inc., Owner: Lillian and Mark Grady, 2800 Pinos Altos Rd., Silver City, NM. He asked all those in favor to say aye, and all 4 Councilor said aye. He asked if any were opposed, and there were none. Motion carried.

B. Approval / Disapproval of Notice of Intent Ordinance No. 1208: an Ordinance amending Chapter 10 (Business), Articles II, III, and VII of the Town of Silver City Municipal Code, relating to business registrations, business licenses, and permits within the Town of Silver City, Grant County, NM. Mayor Marshall said Notice of Intent Ordinance No. 1208 was to clean up the language and update the fees on the Town's business licenses and registrations. Attorney Scavron presented the details and offered an amendment that Mayor Marshall read. He said that to Section 10-20 they would add a final sentence, "Said business registration fee shall also be imposed on all persons doing business within the Town who do not have places of business established within the Town." He said under Section 10-21 to add to the last sentence, ". . . , or are otherwise separately regulated and paying a fee under any other provision of the Municipal Code." Mayor Marshall asked Julie Salaiz, Lead Code Enforcement Officer, to provide further details, and there was further discussion. Mayor Marshall asked if there were comments from the audience, and there were none. There was no further discussion from the Council. Councilor Bettison moved to approve Notice of Intent Ordinance No. 1208 and she read the amendments to Sections 10-20 and 10-21. Councilor Ray seconded. Mayor Marshall said there was a motion and a second to approve Notice of Intent Ordinance No. 1208, and asked if there was any other discussion, and there was none. He said there was a motion and a second with no further discussion to approve Notice of Intent Ordinance No. 1208 as amended, and he read the agenda item description with the amendments that had been read twice. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if there were any opposed, and there were none. Motion carried.

C. Approval / Disapproval of Notice of Intent Ordinance No. 1210: an Ordinance amending the Municipal Code of the Town of Silver City, Grant County, NM, Chapter 28 (Municipal Court), Article IV (Initiation of Proceedings, Sentencing, Fine and Court Costs). Judge Ruiz, Municipal Court, presented the details of Notice of Intent Ordinance No. 1210 and said it was to have a bench warrant fee instead of using a contempt of court charge added to the offense. She said the contempt of court charge was for acts that were truly contemptuous and she gave examples. She said that adding a bench warrant fee would streamline the process, and she explained the process, etc. Mayor Marshall said he would entertain a motion. Councilor Morones moved for approval of Notice of Intent Ordinance No. 1210 and he read the agenda item description. Councilor Bettison seconded. Mayor Marshall said there was a motion and a second to approve Notice of Intent Ordinance No. 1210, and he asked if there was any discussion. There was none. He said there was a motion and a second to approve Notice of Intent Ordinance No. 1210 to adopt Ordinance No. 1210, an Ordinance amending the Municipal Code of the Town of Silver City, Grant County, NM, Chapter 28 (Municipal Court), Article IV (Initiation of Proceedings, Sentencing, Fine and Court Costs). He asked all

those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

D. Approval / Disapproval of Resolution No. 2012-21: adopting the goal of reaching a 33% recycling rate and taking such steps as are necessary to reach this goal. Dr. Terry Timme, Sustainability Planner and Recycling and Program Specialist of the Office of Sustainability, presented the details of Resolution No. 2012-21 and the Strategic Recycling Plan. He said that Silver City had a 10-1/2 percent recycling rate. Mayor Marshall said he would entertain a motion. Councilor Ray made a motion to approve Resolution No. 2012-21 and he read the agenda item description. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to approve Resolution No. 2012-21 and he asked if there was any other discussion. There was none. He said there was a motion and a second to approve Resolution No. 2012-21: adopting the goal of reaching a 33% recycling rate and taking such steps as are necessary to reach this goal. He asked for a roll call vote. Councilor Morones voted aye; Councilor Ray voted aye; Councilor Cook voted aye; and Councilor Bettison voted aye. Motion carried.

E. Approval / Disapproval of Request for Proposal #12/13-1P: Legal Services. Manager Brown said the Town received 1 bid for the RFP #12/13-1P Legal Services, and it was from Robert L. Scavron. He said it was staff's recommendation to award the RFP to Mr. Scavron. Mayor Marshall said Mr. Scavron's years of experience had brought such an asset to the community, to the Council, and to the Town as a whole. He said it was one thing to have a lawyer skilled in litigation and that would spend their days in court, but it was another to have a lawyer that took a proactive approach, gave sound advice, kept them out of court and their litigation costs down, and that made sure that they had sound business practices and were legal in the intent of the law. He said that he really appreciated that and did not think that with less of a lawyer that he could have continued to run for office. He told Mr. Scavron that he had been a major part of the decisions for him to stay on the Council. He said that he was honored to support Mr. Scavron's proposal and staff's recommendation to retain his services as the Town's Attorney, and that they could not have found a better candidate had they done a national search. Councilor Bettison moved to approve Request for Proposal #12/13-1P Legal Services per staff's recommendation to Robert L. Scavron, P.C. Councilor Morones seconded. Mayor Marshall said there was a motion and a second to approve staff's recommendation for RFP #12/13-1P. There was further discussion. Mayor Marshall said there was a motion and a second and no further discussion to approve staff's recommendation for RFP #12/13-1P: Legal Services to Robert L. Scavron, P.C. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

F. Appointment of Councilors to Museum Board and the Grant County Regional Dispatch Authority. Mayor Marshall said the Museum Board was currently held by Councilor Ray and the Grant County Regional Dispatch Authority was currently held by Councilor Bettison with himself as the alternate. He said that he wanted to change the order and make Councilor Bettison the appointee to the Museum Board and himself as the primary appointee to the Grant County Regional Dispatch Authority with Councilor Ray as the alternate. He asked if there was any objection by the Council, and there was none. He said those appointments would take effect immediately.

G. Appointment to Museum Board. Mayor Marshall said there was 1 applicant. He said that he, the Chair, and staff at the Museum had considered the application and that he received a positive recommendation from all. He said that he would like to appoint Ronald L. Phair with consensus from the Council. There was no objection from the Council.

H. Request for removal of a member from the Planning and Zoning Commission due to non-attendance. Mayor Marshall read the Land Use and Zoning Code, Section 6.1.1 (4) regarding attendance and how failure to attend any 3 of 12 meetings shall be considered just cause and grounds for removal of that member. He said the Chair requested that Mr. John Tafoya be removed from the Commission so they could begin advertising to fill his position. Mayor Marshall said that he did not take it lightly and that they had made numerous attempts to contact Mr. Tafoya. He said it created a problem with the Planning & Zoning Commission because it made it more difficult for them to reach a quorum and address the Town's business. He said it could cause enormous hardships on parties that have business before the Commission and that it was very important that Mr. Tafoya's position be returned to vacant and that they fill it promptly. He said that if there was no objection from the Council he would remove Mr. John Tafoya from the Planning and Zoning Commission. There was no objection.

12. ADJOURNMENT – Mayor Marshall asked for a motion to adjourn. Councilor Morones moved to adjourn at 10:15 p.m. Councilor Ray seconded. Mayor Marshall stated there was a motion and a second to adjourn. He asked all those in favor to say aye, and all 4 Councilors said aye. He asked if there were any opposed, and there were none. Motion carried.

/s/

James R. Marshall, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk