

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
REGULAR COUNCIL MEETING
Grant County Administration Center, 1400 Hwy. 180, Silver City, NM
May 26, 2015, 6:00 p.m.**

Present:

Michael S. Morones, Mayor
Cynthia Ann Bettison, District 1
Lynda D. Aiman-Smith, District 2
Jose A. Ray, Jr., District 3
Guadalupe Cano, District 4

Also Present:

Alex C. Brown, Town Manager-Finance Director
Robert L. Scavron, Town Attorney
Ann L. Mackie, Town Clerk
Traci Burnsed, Planning Technician
James Marshall, Assistant Town Manager

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE** – Mayor Morones called the meeting to order at 6:00 p.m.
- 2. CEREMONIES** – None.
- 3. PROCLAMATIONS** – "First New Mexico Bank Wild, Wild West Pro Rodeo Week" - May 30 - June 6, 2015. Mayor Morones read and presented the proclamation to Tyler Brown, Rodeo Chairman. Mr. Brown thanked the Town for its ongoing support of the rodeo.
- 4. PUBLIC INPUT** – The following persons provided their comments about energy and PNM's Replacement Plan for the San Juan Generating Station: Pete Rankin, Andy Payne, Debraura James, Tom Manning, Debra Manning, and Janet Wallet-Ortiz. Some of their comments included the following: they encouraged the Council to follow suit with Santa Fe and Albuquerque by passing a Resolution in opposition to PNM's Replacement Plan; that there were other power replacement proposals that were cleaner and cheaper; that they needed more solar than what PNM was proposing; how they needed cleaner, cheaper energy resources that would create new jobs; that PNM wanted to maximize their profits for their shareholders; that retiring all of the 4 coal plants would be the best solution; that they did not need more radioactive waste; and that nuclear plants meant nuclear waste and dangerous possibilities for meltdowns, etc.
- 5. COUNCIL COMMENTS** – The Council commented on the following: congratulated the Mimbres Region Arts Council and Faye McCalmont for one of the most successful Silver City Blues and Bikes Festivals ever and that they may have topped 10,000 attendees; gave thanks to the Police Department, Fire Department, Sheriff's Office, Parks Department, etc. for their work during the festival; that flags were not flown at Gough Park because they had been stolen; that the intersection of Broadway and Cooper needed cross walks and that the stop sign needed to be moved out of the shoulder of the handicap ramp southbound on Cooper; thanks were given to the people that provided public input; the upcoming event, "Conversation with a Councilor and the Community Development Department" that would be hosted by Councilor Aiman-Smith on June 10th at 6:30 p.m. at the Western New Mexico University Student Memorial Building to discuss infrastructure; that drivers on Broadway needed to slow down because citizens walked a lot; that a movie was made to raise funds for the Silco Theater and the cost was \$10; examples of how local businesses were going above and beyond in the community; that Councilor Cano had earned the designation of Certified Municipal Official from the New Mexico Municipal League and she thanked Manager Brown and Clerk Mackie for their encouragement and support to finish that process; that the Grant County Senior Olympics was going through an evolution process and that Mario Quintana had grown the program to be spectacular; and per Councilor Cano's request, Scott Terry, President of the Silver City/Grant County Chamber of Commerce, provided information on the upcoming July 4th parade activities. Mayor Morones congratulated the Silver High School Softball Team for winning their 5th State Championship in a row. He commented how lots of students were working hard and representing the community well, and were learning how to be competitive and to work toward common goals which would be productive in real life. He said according to an athletic director 273 out of 497 students that participated in 20 different sports maintained a 3.5 grade point average. He congratulated them, including Attorney Scavron's daughter for receiving an academic letter. He said they tended to be cynical about youth today, but he thought they were safe going forward and that they would be their future leaders.

6. CHANGES TO THE AGENDA – None.

7. APPROVAL OF THE MINUTES – Regular Meeting on May 12, 2015 - Councilor Aiman-Smith moved to approve the minutes of the Regular Town Council Meeting of May 12, 2015, and Councilor Bettison seconded. Mayor Morones stated there was a motion and a second to approve the minutes of the Town of Silver City's Regular Council Meeting of May 12, 2015. He asked if there was any discussion, and there was none. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

8. REPORTS –

A. Report about the PNM plan for the San Juan Generating Station by Ron Darnell, Senior Vice President of PNM. Mayor Morones said he asked Mr. Darnell to give a presentation and that there would be no action; that it was just an item for discussion. Bruce Ashburn, Community Manager of PNM, introduced Ron Darnell, Senior Vice President of PNM. Mr. Darnell said they strived to balance 3 things: reliability, affordability, and the production of electricity in the most environmentally way possible. He provided details of their energy production and said PNM was responsible for a tremendous amount of green economy and green energy jobs. He gave a history of the environmental commitment at San Juan and how it reduced 4 pollutants, how they agreed to retire 2 coal units in San Juan and that coal production would be cut in half at that facility and that there would be 50 percent or more reduction in 7 different emissions, including carbon, based on a proposed Clean Power Plan set forth and published in June 2014. He said the controversy was not around retiring the 2 units of coal, but how to replace that capacity; that part of that retirement plan was to bring nuclear capacity from Palo Verde outside of Phoenix and that PNM owned 10 percent in Unit 3 of that nuclear power station. He said it was the very best performing nuclear plant in the world and had plenty of onsite storage and was licensed to run until 2046. He said they would build a gas-peeking plant in San Juan County to help mitigate some of the tax base loss, and they proposed to build 40 megawatts of solar. He reviewed where they were with the docket and that the Public Regulation Commission of New Mexico would begin to debate the merits of the recommended decision. He said the Commission would make the decision and PNM would have to abide by that decision. He reviewed the documents that were provided to the Council in their meeting packet. He answered questions from the Council and there was further discussion.

Councilor Bettison moved for short recess at 7:14 p.m. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second for a short recess. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. Mayor Morones called the meeting back to order at 7:25 p.m.

B. Staff reports. None.

9. PUBLIC HEARINGS -

A. Approval/Disapproval of Resolution No. 2015-11: providing for the encroachment of a grease barrel owned by Q's Southern Bistro LLC, DBA Fry House, on a portion of the Texas Street right-of-way. Mayor Morones 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 matter, or had any communication from any party to the case, and all 4 Councilors said no. He qualified all of them to be on the hearing board. He asked all parties and witnesses, including staff members, to come forward to be sworn in to testify by the Town Clerk. Mayor Morones stated that anyone not sworn in would not be able to testify or participate in the hearing. The Town Clerk swore in 10 witnesses. Mayor Morones read the procedures of how the hearing would be conducted. He gave the floor to Traci Burnsed, Planning Technician. Ms. Burnsed presented the details of the encroachment permit application from the staff report and the PowerPoint presentation that was included in the Council's meeting packet. She read the Town's Land Use Code Section 6.3.9 Encroachment Permit, the purpose, review procedures, and criteria, and stated the Community Development Director had the responsibility for reviewing applications for encroachment permits and making a recommendation to the Town Council to either approve or deny the request. She read and described all of the comments received by citizens and by Town staff. She reviewed the Town's Comprehensive Code, Section 3-17 A Pedestrian Friendly Community, and Section 4-8 Transportation and

Circulation, Accessibility for the Handicapped. She also reviewed the Town's Land Use and Zoning Code's Table 5.2 Required Street Dimensions and the minimum sidewalk width. She said they looked at other criteria under the requirements of the Land Use and Zoning Code for encroachment permits and whether or not the application endangered the health, safety, and general welfare of the community as noted by Code Enforcement and Fire Department staff, and she read their comments. She said they also looked at criteria for the reasonable use of the applicant's property and how the proposed encroachment was not necessary because they thought the current location was more than a reasonable use of the owner's property.

Attorney Scavron asked if he could interrupt, and Mayor Morones gave him the floor. He said the whole issue of an encroachment permit was to allow the owner, the holder of the land interest, to make use of their own property and that sometimes it required an encroachment of public property. He said in this case the applicant should not be the individual tenant, but it should be the land owner. He said the recommendation was not dependent on the applicant, but was dependent on the facts and the Land Use Code. He said that he talked with the Assistant Town Manager, James Marshall, to see if it was appropriate to substitute the applicant if the Council would permit a substitution of the applicant from Fry's to the owner of the building. He said the prime owner was Janey Katz and that she should be given an opportunity to continue this case to the next Council meeting if she was not prepared to argue what she needed to argue. There was further discussion about changing the name of the applicant, the meeting notice requirements, etc. Ms. Katz confirmed that she was the applicant and completed the application and paid the fee. Attorney Scavron said with the agreement of the Assistant Town Manager and the agreement of the underlying applicant, Janey Katz, that they should go ahead with the case and let Ms. Katz be the primary applicant, and let Fry's continue to make its case in support of the applicant. James Marshall said he had no objection to changing the applicant for the hearing, that the staff report had been presented and all of the investigation that was conducted did not change with the applicant's name. He said all of the material facts remained the same so they would not object to changing the applicant. Mayor Morones said it did not change the content that was discussed and that Ms. Katz was listed in the Resolution as the property owner. He asked the Council if there were any objections to changing the name of the applicant. Councilor Bettison asked further questions about the published meeting notice and that she wanted to make sure they were not going to be in some sort of legal issue because of the previous publication. Attorney Scavron said the issue had to do with the grease barrel and the location, not the owner of the corporation and not the owner of the restaurant. He said the justice in the case had nothing to do with the identity of the applicant; that it should be with what the Land Use Code said and what analysis of facts on the ground said. He said the tenant should be looking to the landowner for amenities and not the Town Council. Mayor Morones said as the presiding officer he saw no material change and the facts presented should not change based on any facts. He said everybody was aware of who was doing what unless there was any further objection. Councilor Bettison said she would like the owner of the property to state it and not the Town's attorney, but that was up to the hearing officer. Mayor Morones gave Janey Katz the floor. Ms. Katz said she was the manager of Open Window LLC that owned the Hub Plaza. The Mayor asked her if she filled out the paperwork. She said Anthony Quintana started it, but she wrote the letters, paid the \$75; that she was the applicant and that staff knew it, but she needed Anthony Quintana to know about the different barrels, etc. Mayor Morones said they should accept the substitution of the applicant. He asked Town staff to complete their report.

Ms. Burns stated it was the opinion of the Community Development Department Director and his designee based solely on information included in the application, citizen input, departmental comment, and analysis of the Town's plans and Land Use Code, that the Town Council deny the request for the reasons presented. She said if after hearing further evidence presented in the public hearing the permit was recommended for approval by the Town Council, the Community Development Director and his designee recommended 3 conditions, and she read them. She read the criteria of the Land Use Code, Section 6.3.9 Encroachment Permit and removal of an encroachment. She asked if there were any questions and there was further discussion.

Mayor Morones asked Ms. Katz to present her case. Ms. Katz commented that she loved everything about downtown; that their hope when the Hub Plaza was created was that it would be a town square; on how it was a good thing to have more restaurants; on the importance of tourism for Silver City; and on her big belief in green and recycling. She commented on Alotto Gelato closing their business and Shevek's plans for opening a restaurant there; on concerns of garbage smells being worse than the grease barrels; and on the oil recycling process. She continued discussion on a possible new site for the oil receptacles showing slides of the location and that encroachment would not be any more than what's in place; on her desire of not keeping the oil receptacles in her property to accommodate Shevek's plan for a restaurant; on her willingness to take responsibility to insure that the process of preparing the oil for transportation

was done; on the need for tables and seating space for new businesses coming in; and that she had only one person comment to her in a positive manner of the Hub Plaza for tourism, of being a place for locals to enjoy, and of being a hub as a food court. Ms. Katz commented again on the possible new site location and how it would be less hazardous when bringing in the hoses that were used to remove the oil; and that she would be totally responsible for any grease spills on city sidewalks.

Discussion continued with questions the Council had on the measurements provided on the curb reference the Town's Comprehensive Plan requirements; on removing obstacles for pedestrians; on the possibility of having to remove the receptacle within 90 days; that the receptacle would be anchored to the building; how there was no Code that mandated the receptacle to be away from a restaurant's opening or access to the grease barrel by oil recyclers; on the receptacle being emptied weekly; and on mitigating the smell of grease.

Councilor Bettison moved for short recess at 8:32 p.m. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second for a short recess. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried. Mayor Morones called the meeting back to order at 8:37 p.m.

Discussion continued with questions the Council had on the location of the receptacle; on concerns with spills for those using a cane; on the cleanup of spills; on Ms. Katz's agreeing to be the primary liability insurance holder for any incidents of the encroachment area; on liability insurance on the Hub's bathrooms; on how the past business owners managed the grease issue; and that if the power poles were removed with contingency that Ms. Katz could also remove the grease barrel within 90 days.

Mayor Morones asked if there were any witnesses in support of the applicant's case. Anthony Quintana of Q's Southern Bistro doing business as Fry House commented on the current process that the Tucson company followed to drain the grease containers that included running the hoses through the patio and courtyard where people would be eating and could slip and fall; on understanding the church's concerns of smell and spills; on the process his employees followed to clean grease spills for safety and appearance purposes, and disciplinary actions if not done properly; and on having a clean reflection on his restaurant establishment.

Discussion continued with questions the Council had on securing the receptacles from vandalism or tipping; securing the receptacles by bolting them to the wall and having locks; on the receptacles weighing from 700-800 pounds when full; on not having incidents of tipping receptacles; that they could not be set on fire; and on how to ensure that future tenants would comply with procedure.

Mr. Quintana commented on respecting everybody; his limits and boundaries as a business owner; on having a place for all age groups to go to; and on the Hub being a busy place. Discussion continued with questions the Council had on the Town's Comprehensive Plan and Land Use Code for examining issues; on the proposed encroachment size for the receptacles; and on capacity size for current businesses and growth.

Mayor Morones asked if there were any other witnesses in support of the applicant's case. Shevek Barnhart from Shevek & Company Restaurant commented on his plans on taking over the Alotto Gelato space; on the use of a fryer and generating some grease; on his very specific system of cleaning the fryers and disposing of oil; on his lease to include being responsible for grease spills and clean-up; on keeping the smell down; on the time frame oil could be used before disposing of it; and that it was pretty impossible to set on fire.

Discussion continued with questions the Council had on using the current grease space area; on Mr. Barnhart's plans of making it handicap accessible through the back garage doors and for dining outside behind the restaurant; on concerns of having to pull hoses through the outside dining area to get to the grease barrel; on flies being more of a nuisance than the grease trap; and on safety, traffic, and time frame concerns when the truck came to empty the receptacle on a one-way street.

Mayor Morones asked if there were any other witnesses in support of the applicant's case. There were none. He asked if there were any witnesses in opposition to this case. David Berry, a resident at 511 N. Bullard Street and owner of Homestead Mining Company for forty years, had the following comments: his part of getting the historic district in place; on the request not being in the spirit of the historic district; on setting prudence on city property; on the system already in place that was working; on there not being an actual need but it was more for the convenience of private

businesses; on there being no guarantee that spills would not happen that would cause stench or vermin; that it would only take one spill for cockroaches, rodents, etc. to appear; on not alternating downtown to a point of precedence; that it was not an encroachment request but a variance request; on it not being an appropriate use of Town space when private space was available; that the facility was very nice and that businesses wanting to come in needed to look at what was doable; on not being the long-term vision for the direction of downtown; and he asked the Council to deny the request. Frances Vasquez, a member of the Church of the Good Shepherd, congratulated Mr. Quintana and Ms. Katz for their endeavors and accomplishments downtown that many people enjoyed. She requested that the Council carefully consider the staff recommendation to deny the request for the grease barrel that would be right across the front of the church where church members parked. There was discussion on carrying five gallons at a time to Q's Southern Bistro Restaurant. Win Taylor, a member of the Church of the Good Shepherd, commented that she did not like the idea of the grease barrel being across the street from the church; that people were using Texas Street to park because of the good restaurants downtown; on using cones when the grease trucks needed to park on Bullard Street; on setting a precedence every time a restaurant came in to use Texas Street for a grease barrel; on her experience of a spill near Q's Southern Bistro and the stench; and on the system that was in place that was working. Sara Boyett with the Church of the Good Shepherd, gave a brief history of the church and their services; questioned how the request was going from benefiting the Fry House to benefiting Shevek's; asked the Council to balance the spiritual needs of the community; to deny the request; and to look at alternative solutions like behind Shevek's. Mr. Barnhart stated that his restaurant did not own the property. Paula Geisler commented that she lived near the area; that there was a significant smell from the grease barrel; that her dealings with Ms. Katz had not been good; that she had to move her front door because of the smell of rotting food; and that she hoped the Council would deny the request. Mr. Berry commented that the Town would be setting a precedence if allowing the of use municipal property for grease traps and for the Council to seriously consider the legalities involved and to deny the request.

Ms. Burnsed stated that no grease barrels were on public property and that none on private property were encroaching; that a water source would aid in maintaining and cleaning the grease barrels, and also for their appearance. Discussion continued on the effective system in place; if there were any other viable solutions to utilize property without encroachment; that the request was for convenience and was not an absolute need; on the hard work that went into making historic downtown nice and keeping it that way; that the staff's report and opinion had not changed with what was presented; that it was quite clear on their decision to deny the request because it did not meet the requirements based on the Town's Comprehensive Plan; and looking for other alternatives. Ms Katz commented on how she loved the town; on what she had invested in her buildings personally and financially; that she was a fan of the church and was not trying to insult the church; that she did not think there would be any issue with the smell; that downtown was dependent on people her age and that younger people needed to step up to take over downtown; that this was not a personal issue; and she thanked the Council for their consideration. Discussion continued on the request to add an additional impediment in the sidewalk that would not fulfill the goals of the Comprehensive Plan to gradually remove impediments.

Mayor Morones asked the hearing board if they were ready to render a decision, and they said yes. Councilor Bettison moved to deny Resolution No. 2015-11: providing for the encroachment of a grease barrel owned by Q's Southern Bistro LLC, DBA Fry House, on a portion of the Texas Street right-of-way based on the following: the requested permit does not conform to the Comprehensive Plan and she read the Staff report opinion in its entirety. After stating her motion Councilor Bettison asked Attorney Scavron if her motion was correct and requested direction. Councilor Bettison withdrew her motion and moved to deny the application for an encroachment permit based upon staff recommendation and the testimony heard, specifically that the applicant has failed to meet the three criteria necessary for the encroachment permit. Councilor Ray seconded the motion as stated. Mayor Morones said there was a motion and a second as read into the record, and he asked Clerk Mackie to repeat the motion. There was discussion that the resolution number did not need to be mentioned in the motion and that a vote aye was to deny. Mayor Morones asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted nay; Councilor Ray voted aye; and Councilor Cano voted aye. Motion carried.

10. UNFINISHED BUSINESS – None.

11. NEW BUSINESS –

A. Approval / Disapproval of Preliminary Budget for Fiscal Year 2015-2016. Manager Brown told the Council that they had the summary that was required by the State, and that those were the forms that were required to be submitted for the Budget for Fiscal Year 2015-2016. He said there were no changes from the last presentation, but they did correct one mistake to the Recreation Center's expenditures which increased it by \$16,000. He said the budget did not include the credit card fee, but they could add that; the Council agreed to that addition Manager Brown said the credit card revenue would increase the General Fund's bottom line by \$38,000. He said it was not required to have a Resolution for the Preliminary Budget, and it was not required that he obtain their approval, but he always liked for them to be okay with what he was submitting. He asked if they had any questions, and they did not. Mayor Morones said he would entertain a motion. Councilor Bettison moved to approve the Preliminary Budget for Fiscal Year 2015-2016. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second to approve the Preliminary Budget for Fiscal Year 2015-2016. He asked if there was any further discussion, and there was none. He asked for a vote of all those in favor, and all 4 Councilors said aye. He asked if any were opposed, and there were none. Motion carried.

B. Appointments to the Cemetery Board. Mayor Morones said they had 2 applications, and he named Rider South and Jeffrey Fell. He said both were currently on the Cemetery Board and the Chair would like to see them reappointed. He said he would do so if there was no objection. There was no objection by the Council. Mayor Morones stated they were reappointed.

Councilor Bettison moved to recess and reconvene in an Executive Session pursuant to 10-15-1(H) for following reason: (1) meeting pursuant to issuance, suspension, renewal or revocation of license. Councilor Aiman-Smith seconded. Mayor Morones said there was a motion and a second as read into the record. He asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted aye; and Councilor Cano voted aye. Motion carried. Mayor Morones called the meeting back to order at 10:46 p.m. and stated the matters discussed in the closed meeting were limited only to those specified in the motion for closure, and he asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted aye; and Councilor Cano voted aye. Mayor Morones asked if any were opposed, and there were none. Motion carried.

12. ADJOURNMENT – Mayor Morones asked for a motion to adjourn. Councilor Bettison moved to adjourn at 10:48 p.m., and Councilor Cano seconded. Mayor Morones 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/

Michael S. Morones, Mayor

Attest:

/s/

Ann L. Mackie, Town Clerk