

RESOLUTION 2005-37

**PROVIDING FOR THE ENCROACHMENT OF A PORTION
OF THE GILA STREET RIGHT-OF-WAY**

WHEREAS, A property survey determined that portions of a house, fence, and walls that already exist located on Lots 1 and 3 of Block 10 of the Fraser addition addressed 202 W. Gila Street are encroaching into the Gila Street right-of-way; and

WHEREAS, The house and walls were built prior to the implementation of the current regulations; and

WHEREAS, The Community Development Department and other Town Staff recommend approval of the request for an Encroachment Permit for approximately 747 square feet into the Gila Street right-of-way; and

WHEREAS, The Council accepts such recommendation.

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

Section 1. The Town will not seek to have the encroaching portions of the structures removed from the Gila Street right-of-way as long as the building and structures stand. This provision has the following conditions:

- a) No further encroachments shall occur; and
- b) The Town may require removal of all or part of any encroaching structures or use after 90 days written notice to the property owners.

Section 2. The Town retains ownership of and reaffirms its need for the entire Gila Street right-of-way.

Section 3. The Town only addresses the Town's consideration of the Gila Street right-of-way and not those of other utilities that may be entitled to use the street right-of-way.

Section 4. The Encroachment Permit meets all criteria required in Section 6.3.9 (C) of the Land Use Code based on the following Findings:

Findings

1. The requested permit conforms to the Town's 2004 Comprehensive Plan, the 1999 Land Use Code and relevant policies adopted by the Town. The Comprehensive Plan does not specifically address encroachments; however, the request does not violate the plan. The request is in compliance with the Land Use Code criteria for approval and Town policy to retain right-of-ways.
2. The encroachment permit does not endanger the health, safety or welfare of the community as the encroachments have existed on portions of the Gila Street right-of-way for a substantial amount of time and have not impaired the use of that right-of-way.
3. The proposed encroachment permit allows the property owner to continue using the property, which is reasonable since the structures, built prior to current regulations, have not interfered with traffic and pedestrian circulation.

PASSED, APPROVED AND ADOPTED this 22nd day of November 2005.

Terry Fortenberry, Mayor

Attest:

Jane Toomajanian, Town Clerk