

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY  
REGULAR COUNCIL MEETING  
REMOTE MEETING IN COMPLIANCE WITH THE NM OPEN MEETINGS ACT  
August 25, 2020, 6:00 p.m.**

**Present:**

Ken Ladner, Mayor  
Cynthia Ann Bettison, District 1  
Lynda D. Aiman-Smith, District 2  
Jose A. Ray, Jr., District 3  
Guadalupe E. Cano, District 4

**Also, present:**

Alex C. Brown, Town Manager  
James Marshall, Assistant Town Manager  
Robert L. Scavron, Town Attorney  
Ann L. Mackie, Town Clerk  
Freddie Portillo, Police Chief  
Milo Lambert, Fire Chief  
Jeff Fell, Assistant Fire Chief & Emergency Manager  
Robert Higgins, Information Technology Director

**1. CALL TO ORDER / PLEDGE OF ALLEGIANCE** – Mayor Ladner called the meeting to order at 6:00 p.m. Clerk Mackie did a roll call of the Mayor, Councilors and staff.

**2. CHANGES TO AGENDA** – None.

**3. CEREMONIES** – None.

**4. PROCLAMATIONS** – None.

**5. COUNCIL COMMENTS** – Councilor Aiman-Smith thanked Priscilla Arredondo, Town Planner, for reporting there were 313 acres of open space associated with Boston Hill. She acknowledged and praised the Town and citizens for working so hard on those open space designations. Councilor Cano had no comments. Councilor Ray thanked the Governor for doing COVID-19 updates in Spanish on the Albuquerque channel news. He questioned why Census reports were being done at houses that were almost demolished or vacant for years, and he stated he refused to give information to the Census worker. Councilor Bettison expressed her appreciation to the Silver City Fire Department and the Silver City Police Department for everything they did with the fire that occurred on Santa Rita Street, and how nearby residents commented on how professional they were and how they treated them with utmost kindness, concern, decency, and true community mindfulness. She thanked Fire Chief Lambert and Police Chief Portillo. She also commented on the work of the Silver City Rotary Club, particularly Kathy Eaton, for distributing masks and she thanked Fire Chief Lambert, Police Chief Portillo, and the Mayor for spreading the word and providing masks to folks. She thanked the Silver City Rotary Club and Grant County citizens for raising over \$12,000 for The Commons for the food insecurity, and how she was happy to be a member of the Silver City Rotary Club because they provided 36 or 38 hours of service combined per month as Rotarians in repacking dry goods with the funds attained. She said citizens of Grant County came forward with \$5,000 and the Rotary Club matched it, and they also received a district grant for food insecurity for the remainder of the amount. She extended her appreciation and thanks to all of the folks, that live and shop in Silver City, for everything they were doing to adhere to the Governor’s Public Health Orders and for wearing masks, and she had noticed a significant increase in people doing that. Mayor Ladner expressed his appreciation to the Police Department and others that had been making masks or distributing masks. He said he noticed a big difference in the number of people wearing face masks downtown and at the local retail merchants. He said Southwest New Mexico and Grant County were doing pretty well with a low number of cases of COVID-19 and there were no new cases during the past week. He thanked all that had been involved in the effort.

**6. APPROVAL OF MINUTES - Regular Meeting on July 28, 2020 -** Councilor Aiman-Smith moved to approve the Minutes of the Regular Town Council Meeting of the Town of Silver City of July 28, 2020. Councilor Bettison seconded. The Mayor asked if there was any discussion, and there was none. 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. The Council Meeting scheduled for August 11, 2020 was canceled. Therefore, there were no minutes.

**7. PUBLIC INPUT** – Mayor Ladner said they had 60 people that provided input by phone and email for the Council Meeting. He said he read all of them that he received from Clerk Mackie, plus those sent to him and not her. He said he spent almost two hours reading them to himself and that he asked Clerk Mackie to send all of them to the Council and ask them to read them. He said he hoped they had all been read by the Council. He said they would put those comments in the minutes of the meeting so they would become part of the public record. He said in order to monitor if the Council had been following the comments, he asked the Council if any of them did not read the comments that Clerk Mackie sent to them. He confirmed that all of the Councilors shook their heads to indicate no and that the comments would become part of the public record when the minutes were published.

**8. REPORTS** –

**A. Staff Reports** - Manager Brown had no reports.

**9. PUBLIC HEARINGS** – None.

**10. UNFINISHED BUSINESS** –

**A. Approval / Disapproval of Ordinance No. 1293: An Ordinance amending Chapter 22 of the Town of Silver City Municipal Code, creating a new Section 22-30 regarding the use of face coverings by employees and customers when inside places of business and by all members of the public when in public places.** Councilor Bettison stated she introduced Ordinance during the July 28, 2020 Council meeting for the health, safety and welfare of the Town and its inhabitants, and that the Ordinance paralleled the Governor’s Public Health Order and provided for a number of exceptions that were not listed in the Governor’s Public Health Order. She said the Ordinance was to let their business owners, employers, and employees know that the Council understands the burden of mask enforcement that has been placed upon them and the Council wanted to ensure them that they stand behind them, as does the Silver City Police Department and they will enforce the State’s Public Health Order at the local level through Ordinance No. 1293. She said the Ordinance was also to let the Silver City Police Department know the Town Council stands behind their efforts to educate the public about the benefits of wearing masks to ensure the health, safety, and welfare of others and that they stand behind them in assisting businesses as needed. Councilor Bettison discussed how COVID-19 had impacted her family and friends. She said those were the things she did not want to happen to folks in the community; that some had survived and some had passed away, but if they all pulled together and worked to ensure that everyone was doing their best to adhere to the Governor’s Public Health Order as well as to their local orders if the Ordinance passed, she said she thought Grant County would remain strong. She said their cases had not been increasing and their death rate had not increased, so there was something to social distancing, wearing a mask, and being considerate of others.

Councilor Bettison said she would suggest certain modifications to the Ordinance which would be described in her motion to adopt the Ordinance. She said she consulted with the Town Attorney as to whether the proposed changes made herein were so material as to change the subject matter or intent of the original Notice of Intent Ordinance for the purposes of the Open Meetings Act which would then require a re-publishing. She said the Town Attorney advised that the changes were directed to clarification and further conformance to the intent of the State’s Public Health Orders, and thus, the Notice of Intent Ordinance did not require re-publishing. Councilor Bettison moved to approve Ordinance No. 1293: An Ordinance Amending Chapter 22 of the Town of Silver City Municipal Code, Creating a New Section 22-30 Regarding the use of face coverings by employers and customers when inside places of business and by all members of the public when in public places, with the following modifications: In Section 22-30 (B) Definitions, the term “face shields” is to be deleted from the category of “face covering” and the subsection is further clarified to read: “Face covering means a cloth, fabric, or other soft and permeable material (without holes or exhalation valves), that cover both the mouth and nose and includes surgical masks, N-95 respirators, handmade masks, and bandanas.” In Section 22-30 (C) 1. Subsections f) and g), the following language is appended to each provision: “where maintaining a distance of six (6) feet between other members of the public at all times is not possible.” In Section 22-30 (C) 2. A new Subsection “g)” is inserted which shall state: “While smoking or vaping, when a distance of at least six (6) feet from other members of the public at all times can be maintained. This exception shall be exercised subject to all prohibitions and/or conditions otherwise provided for by local and state laws regarding smoking in or near public places.” In Section 22-30 (C) 2., a new Subsection “(h)” is inserted which shall state: “Additional exceptions as may later be authorized by Public Health Orders of the Governor and/or Department of Health shall be incorporated herein this Ordinance by reference.” A new

Subsection (E), entitled “Automatic Rescission of Ordinance” is added, which shall state: “This Ordinance shall terminate without further action of the Town Council upon the withdrawal or termination of the Governor’s Public Health Orders mandating the use of face coverings when in public, whether by action of the Governor, the New Mexico Department of Public Health, or a binding decision of the State of New Mexico Supreme Court. This termination shall not, however, act as a bar to the prosecution of cases arising out of violations of this Ordinance prior to the termination mentioned herein.” Councilor Aiman-Smith seconded the motion as stated.

Mayor Ladner asked if there were comments from the Council. Councilor Cano asked why face shields were removed. Councilor Bettison said it was recommended by Emergency Manager, Jeff Fell, because it was not permeable and not listed in the Governor’s Orders. Councilor Cano asked about Section (C) 1. e) about utilizing public or private transportation and how it was not required in (C) 2. a) in personal vehicles, and she asked to clarify at what point you need to wear a mask in private transportation. Councilor Bettison said clarification can be made there and she asked Attorney Scavron for clarification. Attorney Scavron said under (C) 1. e) change to “utilizing public or ‘commercial’ private transportation”. Councilor Cano moved to amend (C) 1. E) to add “commercial” before private transportation. Councilor Bettison voted aye to the amendment to her motion. Mayor Ladner asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted nay; and Councilor Cano voted aye. Motion carried. Mayor Ladner stated Councilor Cano still had the floor. Councilor Cano asked about (C) 1. f) and g) about walking in public and activities such as exercising and she asked to remove both of them. She said she did not think they needed to keep it in there forever and she understood that the Governor had the mandate, but it was important for them to remove it because if they did not and once the Governor did remove it the Ordinance would have extra things in it that they did not need. She said a majority of people opposed to the Ordinance had issues with f) and g) and she would like them to consider removing both of them. Councilor Cano moved to remove (C) 1. f) and g) from the Ordinance. Mayor Ladner stated the motion died for lack of a second. Councilor Cano said in (C) 1. a) she wanted to include churches in the description, and she explained. Councilor Cano moved to add “churches” to (C) 1. a). Councilor Bettison seconded. Mayor Ladner asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted nay; and Councilor Cano voted aye. Motion carried. Councilor Cano said that was all she had.

Mayor Ladner gave the floor to Councilor Ray. Councilor Ray said he was not in support of the Ordinance and he would vote no on it. He said he did not have the right to tell people what to do or not to do. He said they were all in it together. He said if people wanted to wear a mask, let them wear a mask, and if they did not want to wear a mask, then do not wear a mask. He said it had been blown out of proportion, and they were trying to control us. He said he likes to be in control of his life and not have someone control his life. He said it was a redundant thing, and too many people were against it. He said they had a lot of emails, a lot of phone calls, and a lot of voicemails from the public. He said he talked to at least 100 people, and the percentage was very high against it, and he thought they would get a lot more. He said if it passed tonight, may they put it to a public vote so it would be fair and democratic, and not force people to do things. He said his vote would be no. Mayor Ladner asked if there were other comments. Councilor Aiman-Smith said the Ordinance was framed as a public health issue, and as an elected official of a local government it was her responsibility to do what she could to ensure the public health and good. She said she supported the current Ordinance in that it completely paralleled what the Governor was doing, and they did not add a whole lot of new stuff. She gave an example and reminded folks that masks that were cloth barriers that capture the aerosols coming from their breath, so they were protecting their neighbors, their friends, and their community. She discussed how the New Mexico Department of Health recommended updates to the Governor and that she was following how current studies showed that children above the ages of three should be masked because they were little petri dishes of virus and could certainly infect others. She said there was a formal memo from the New Mexico Department of Health to the Governor that encouraged her to change it when she did an update. She questioned whether they should include in Section (C) 2. where it talked about additional exceptions, if they should add, “additional additions or changes” so that when a new set of Governor guidelines comes out reflecting the New Mexico Department of Health guidelines, that they could incorporate them easily. She asked Councilor Bettison or Attorney Scavron if that was the appropriate way to treat that. Attorney Scavron discussed their options for the Ordinance and the options for enforcement by the Silver City Police Department as the Governor changes her Orders. He said his concern was if things were to get more restrictive, and the Ordinance automatically became more restrictive, how do they give proper notice to the public without having to go back in and do an amendment to the Ordinance. Councilor Aiman-Smith said that was the question and she said it was very likely the Governor would say masks were required by age three and over and currently the Ordinance said 13 and over. There was further discussion.

Councilor Aiman-Smith moved to friendly amend Section 22-30 (C) 2. In new Subsection h) should state “Additional exceptions ‘or restrictions’ as may later be authorized by Public Health Orders of the Governor and/or Department of Health shall be incorporated herein this Ordinance by reference.” Councilor Bettison seconded. Councilor Bettison addressed Councilor Cano’s concerns about removing (C) 1. f) and g) and how it would be immediately removed by reference as per Section (C) 2. h) and that adding “or restrictions” will assist them with the understanding that it would be expected that the Town of Silver City would do public service announcements either way; that any sort of change that the Governor made that affected their Ordinance would immediately become a public service announcement, announced at the next Council meeting, put in the newspaper, and posted on the website, etc. Mayor Ladner asked for a roll call vote of Councilor Aiman-Smith’s friendly amendment. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted nay; and Councilor Cano voted aye. Motion carried. Attorney Scavron discussed how he may create a new subparagraph that would be ministerial.

Councilor Bettison mentioned the fact that there were potential citations about the face coverings, but her attitude was that a warning was important. She said their officers had been doing education and receiving compliance when they talked to people. She said it was the officer’s discretion whether or not a warning would be issued or a citation depending on the circumstances. She said education was paramount and she asked Chief Portillo to make comments and whether he supported the Ordinance and how they were currently working to education the public. Chief Portillo said they were moving in the right direction. He said the Police Department’s job was always to protect and serve the public. He said they had been educating the public and handed out a bunch of masks, talked to businesses and citizens, and answered calls for service that had to do with the Public Health Order. He said with education they had a high success rate in gaining compliance. He said the officers had discretion, but if the Ordinance passed, they would continue doing what they had been doing, but if they had to issue a citation they would go in that direction. Councilor Ray said he was leery about the Ordinance because they might get someone to do somebody some harm; that it could happen, they could destroy a building, destroy a car, do something to city hall or to the Council. He said they had to take that into consideration, and he hoped they would not do that if the Ordinance passed. Mayor Ladner addressed Clerk Mackie and said he wanted to make sure that all of the public comments received up to the cut off time on that day would be in the minutes, and that on the website they make a comment that the public can go to the meeting minutes and read the comments by every person that submitted them. He addressed Manager Brown and Chief Portillo and stated he would like to have some period of time where they continue their program of talking to people about the importance of wearing a mask and offering them a mask, and to use the issue of a citation only as a last resort. He said he did not want to see them get bogged down with paperwork and for the courts to be inundated with warnings and citations. He said he agreed with the Ordinance and it was important to show the Governor they were supporting her Public Health Order. He asked Councilor Bettison to read all of the amendments of the Ordinance, and she did. He asked for a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Ray voted nay; and Councilor Cano voted aye. Motion carried.

**B. Approval / Disapproval of Ordinance No. 1294: An Ordinance approving the sale of Town owned property at 2830 Little Walnut Road, Silver City, New Mexico, all in conformance with Chapter 48, Sections 48-20 et seq. of the Town of Silver City Municipal Code.** Manager Brown said the Town issued a bid for the sale of property located at 2830 Little Walnut Road, and the Town received three bids on the property. He said one of the bids was deemed non-responsive because of the way it was submitted. He said it was staff’s recommendation to award the bid to Nick Chavez for \$37,569 plus all closing costs as explained in Section 2 of the Ordinance. He explained further and said it was staff’s recommendation to pass the Ordinance so they could sell the property at 2830 Little Walnut Road. There was further discussion. Councilor Aiman-Smith moved to approve Ordinance No. 1294: An Ordinance approving the sale of Town owned property at 2830 Little Walnut Road, Silver City, New Mexico, all in conformance with Chapter 48, Sections 48-20 et seq. of the Town of Silver City Municipal Code. Councilor Bettison seconded. Mayor Ladner 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.

## 11. NEW BUSINESS -

**A. Approval / Disapproval of the Selection of a Voting Delegate and Alternate to vote at the New Mexico Municipal League’s Annual Conference.** Mayor Ladner said Councilor Bettison, Councilor Cano and himself planned to attend the conference. Councilor Aiman-Smith said she would also attend it. The Mayor said they needed to elect a

delegate and alternate. Councilor Bettison moved to select Mayor Ken Ladner as the voting delegate and Councilor Cano as the alternate to vote at the New Mexico Municipal League Annual Conference. She said she would preside as the President and would be unable to be the alternate. Councilor Aiman-Smith seconded. Mayor Ladner 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 Ladner said Councilor Bettison would be presiding at the meeting with delegates from all over the state of New Mexico and would be introducing speakers and conducting the annual business meeting. He thanked her for her leadership and honorably representing Silver City throughout the state. He said they were really proud of her.

**B. Appointment to the Lodgers Tax Advisory Board.** Mayor Ladner stated Kevin Hubbs reapplied to continue his service on the Lodgers Tax Advisory Board as a general member. He said the Chair of the Board recommended Mr. Hubbs' reappointment. He said if there was no objection from the Council, he would reappoint Mr. Hubbs. There was no objection.

**C. Appointments to the Trails and Open Space Advisory Committee.** Mayor Ladner said Jim Wightman reapplied to continue his service on the Trails & Open Space Advisory Committee and the Community Development Department Director recommended his reappointment. He said if there was no objection from the Council, he would reappoint Mr. Wightman. There was no objection. The Mayor said the Town received an application from Laura Larisch to serve on the Trails and Open Space Advisory Committee and the Community Development Department Director recommended her appointment. He said if there was no objection from the Council, he would appoint Ms. Larisch. There was no objection.

**12. ADJOURNMENT** – Mayor Ladner concluded the meeting Councilor Ray moved to adjourn at 7:22 p.m., and Councilor Bettison seconded. The Mayor 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.

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Ken Ladner, Mayor

Attest:

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Ann L. Mackie, Town Clerk