

**MINUTES OF THE COUNCIL OF THE TOWN OF SILVER CITY
EMERGENCY COUNCIL MEETING
REMOTE MEETING IN COMPLIANCE WITH THE NM OPEN MEETINGS ACT
July 20, 2020, 11:00 a.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
Robert L. Scavron, Town Attorney
Ann L. Mackie, Town Clerk
Milo Lambert, Fire Chief
Freddie Portillo, Police Chief
Bob Higgins, Information Technology Director

1. CALL TO ORDER / PLEDGE OF ALLEGIANCE – Mayor Ladner called the meeting to order at 11:00 a.m. pursuant to Section 2-82 Emergency Meetings of the Town’s Municipal Code. He asked everybody to join him in the Pledge of Allegiance.

2. PROCLAMATION - “Proclamation of the Mayor with Regard to Public Health Emergency”. Mayor Ladner said the purpose of the Proclamation, and the Resolution that would be considered under New Business, was to make it perfectly clear that the Mayor, the Town Council, and the Town staff have supported and attempted to cause full compliance with the Public Health Orders of the Governor. He said there was disorganization in the enforcement of those orders at the state level. He said the local District Attorney, who was the only official in Grant County with the authority to enforce those orders, notified the Police Chief that her office would not enforce the Governor’s orders. He said the District Attorney further stated that the Town did not have the independent authority to enforce such orders. He said at the time and until just days ago, the only option left for the Town would have been for him to issue a Proclamation and assume powers granted to him under the State’s Riot Control Act. He said he chose not to take that path, and said he, the Town Council, and the Police Department have attempted to gain compliance by appealing to the common sense of the community members. He said there would be a Proclamation and a Resolution to clear up any continuing misinformation regarding the position of the Town. He read the Proclamation in its entirety. He stated the Proclamation and the Resolution would be on the Town’s website and posted on the top banner later that afternoon.

3. NEW BUSINESS

A. Approval / Disapproval of Resolution No. 2020-20: Resolution in Support of the Executive Orders of the Governor of New Mexico and the Public Health Orders of New Mexico Department of Health Cabinet Secretary and to Encourage Adherence thereto by the Inhabitants of the Town of Silver City. Sponsored by Councilor Cynthia Ann Bettison. Councilor Bettison said she was dismayed that a news outlet portrayed the Councilor Comments portion of the July 14, 2020 Council Meeting Agenda as a vote or policy decision by the entire Council. She said Councilor Comments was a portion of the meeting where Councilors were free to express their opinions, and no vote or action could be taken as it was not an agenda item for decision. She said to take Council action or a vote there must be a resolution like this one, or an ordinance or public hearing listed on the agenda. She discussed her Council Comments from the July 14, 2020 Council meeting in which she specifically stated her opinion in the need to wear a mask, asked everyone in town to please wear a mask, and asked the Town Attorney to research and summarize the positive and negative issues in other New Mexico Municipalities that had passed ordinances and resolutions regarding mask wearing. She said the Town Attorney provided his report during her Council Comments at that time in order to provide the information to her fellow Councilors and to the public for the sole purpose of beginning a discussion. She said there was no ordinance or resolution on the agenda for a vote to be taken, and the comments were for information only. She said Council Comments of individual Councilors do not make those comments a policy or ordinance.

Councilor Bettison said Resolution No. 2020-20 was a product of the information provided during the July 14, 2020 Council Meeting. She said it was an opportunity for the Council to make a decision to erase any ambiguity of the Silver City Town Council’s position affirming strong support of the Executive Orders of the Governor of New Mexico

and the Public Health Orders of the New Mexico Department of Health Cabinet Secretary with regard to mandatory wearing of facial coverings, social distancing, hand washing, and other orders designed to prevent the transmission of the COVID-19 disease. She said it also provided the Town Council collectively with an opportunity to strongly encourage Silver City citizens and inhabitants to comply with the Governor's and the New Mexico Department of Health's Cabinet Secretary's Orders to wear facial coverings in public and to maintain social distancing for the health, safety, and welfare of all their inhabitants, for the love of their community as they think of the safety of others, and as they do for their own safety. Councilor Bettison moved to approve Resolution No. 2020-20: Resolution in Support of the Executive Orders of the Governor of New Mexico and the Public Health Orders of New Mexico Department of Health Cabinet Secretary and to Encourage Adherence thereto by the Inhabitants of the Town of Silver City. Councilor Aiman-Smith seconded. Mayor Ladner asked if there was any discussion.

Councilor Cano stated she had concerns about the resolution, and the main concern was the seventh Whereas paragraph where it stated, "WHEREAS, it is the intent of the Town Council to erase any ambiguity . . .". She said if they were just going to strongly urge the community to wear masks and were not really going to give them anything with teeth through the Resolution, then she was not sure they were really erasing ambiguity because if a person was already wearing a mask, they would keep wearing one. She said if people were not wearing a mask, then strongly urging them to wear one is not going to make them wear it. She said she also had concerns that it really was not going to do anything. She said they were not helping small businesses, and that small businesses were trying to enforce it on their own and they were not going to get any support from the Resolution. She said law enforcement was not going to get any support from the Resolution. She said it was just a way to make people happy that they did it, but it really was not doing anything.

Councilor Bettison thanked Councilor Cano for her comments and she admitted that it was her first step, and that she would be talking to the Town Attorney to move forward on an ordinance about mask wearing. She said she thought they needed to begin the discussion with a resolution so they could inform the public, and that over the past several months all of the Council members had encouraged people to wear masks. She said the real problem came down to what their District Attorney was going to do. She said maybe they could pass an ordinance that encouraged education and then after a number of warnings it could be somewhat punitive. She said that was something that needed to be discussed, and she was willing to work on it with Attorney Scavron and hopefully the Mayor. She said she thought there would be a point when the New Mexico Supreme Court would uphold the Governor's Orders and the Public Health Orders, and at that point it could make it much easier for their officers to execute those Orders. She said she wanted to begin with a resolution.

Councilor Cano agreed that an ordinance was an order and she would definitely support that. She said she did not believe the Resolution would do anything and she planned to vote no on the Resolution because it did not support their town in any way, and to strongly encourage people to do something that should be required was not the way to go. She said she was anxious to see an ordinance and to hopefully support that.

Councilor Aiman-Smith said they had 49 positive Corona Virus cases in Grant County, and that three weeks ago they had 20. She said there had been an explosion and the Governor's Order and the Public Health Order had specifically made direction for businesses to enforce mask wearing. She said last week Councilor Bettison expressed dismay that the largest retailer in town was not enforcing mask wearing and as of today their corporate policy said they must enforce mask wearing. She said a citizen called the corporate office and learned the intention of the corporate office was to enforce mask wearing. She said the Resolution made it clear that civic virtue of wearing masks, washing hands, and doing social distancing was supported by the Town Council. She said she also agreed that the next step was to have a law, their own local regulation, but she planned to support the Resolution.

Mayor Ladner did a roll call vote. Councilor Bettison voted aye; Councilor Aiman-Smith voted aye; Councilor Cano voted nay; and Councilor Ray could not be heard telephonically. Mayor Ladner asked for Attorney Scavron's advice, and Attorney Scavron said Councilor Ray could call in or indicate his vote through another channel. The Mayor telephoned Councilor Ray and Councilor Ray answered the call and confirmed that he heard all of the discussion. Mayor Ladner told Councilor Ray how each of the other Councilors voted. Councilor Ray asked if there was any way to let the public know how high they must wear their masks. Councilor Bettison said the Resolution did not state how

to wear a mask, but through education they could do that, and Chief Portillo and his officers could inform people how to wear it, etc. Mayor Ladner asked Councilor Ray if he heard Councilor Bettison's response and he said yes. Councilor Ray said he liked the language and the fact that they were using education and encouragement as a first step. He asked if a person had a doctor's excuse that they cannot wear a mask if that would be honored when they enforced it or encouraged people to wear a mask. Councilor Bettison said yes because the Governor had listed exceptions for people that had difficulty breathing and had a doctor's note because some people had difficulty keeping blood oxygen to a certain level when they wore a mask. She said those things were considered invisible disabilities and she thought their officers, and the ordinance would honor that. Councilor Ray thanked the people for attending the meeting. Mayor Ladner asked for Councilor Ray's vote. Councilor Ray voted aye. Mayor Ladner said the motion carried three to one, so the Resolution was approved.

Mayor Ladner commented that for the past three Saturdays he had been walking the streets downtown which he said was not easy to do because of his age and an underlying health condition. He said he had several hundred masks from the Chamber of Commerce that he and his wife put in plastic bags with a little note from the Mayor. He said if he saw someone without a mask, he would introduce himself and ask them if they would help them out by wearing a mask to reduce the spread of the virus so they could reopen their community again. He said Chief Portillo also had an officer walk the streets and give out masks. He said people were very receptive and some people did not know they were supposed to wear a mask. He said he was willing to try to educate community members, but if it did not work and they got the backing of their District Attorney, he was willing to support a much stronger approach.

Attorney Scavron discussed how the Mayor issued a Proclamation encouraging people to educate themselves and to do the right thing for themselves and the community, and Councilor Bettison introduced a Resolution that encouraged education and for people to do the right thing for themselves and the community. He said one thing that was not brought up was that the Silver City Police Department had no powers to enforce the Orders of the Governor and the Public Health Department because the District Attorney said she would not honor any citations written by the Town, that the Town had no authority to enforce the law, and that she was not going to take steps to enforce the law. He said the Town was stuck. He said about three days ago it looked like she may be reversing her position, but from early March until about three days ago they were in that circumstance where they could not enforce the law. He said the Town decided not to go public with the issue because during a time of stress, any more division and pointing fingers and pointing blame would not be helpful to the community in general. He said about three days ago she indicated that she might allow the Silver City cops do their job and that she might enforce the law. He said it was the intention of the Silver City Police Department to enforce the Governor's Orders, so the Resolution and the Proclamation were encouraging people to get smart and do the right thing. He said that did not mean the Town would not take enforcement actions as necessary under the Governor's Order and provided the District Attorney did her job. He said they were not suggesting a policy of no enforcement and just education. He said there were two policies going forward: there would be enforcement when necessary, and the desired way was to educate and get the community to act together. Mayor Ladner thanked him for his comments and stated he thought his Proclamation and Councilor Bettison had made that clear.

4. ADJOURNMENT – Mayor Ladner concluded the meeting and asked for a motion. Councilor Aiman-Smith moved to adjourn at 11:35a.m., and Councilor Bettison seconded. Mayor Ladner stated there was a motion and a second to adjourn. He asked for a roll vote. Councilor Cano aye; Councilor Aiman-Smith voted aye; Councilor Bettison voted aye; and Councilor Ray voted aye. Motion carried.

Ken Ladner, Mayor

Attest:

Ann L. Mackie, Town Clerk