

ORDINANCE NO. 1297

TO REPEAL ORDINANCE NO. 1290 AND ADOPT AN ORDINANCE DECLARING THE INTENTION OF THE TOWN TO CONTINUE THE EXISTENCE AND OPERATION OF ITS “LOCAL LABOR-MANAGEMENT RELATIONS BOARD”, AND FURTHER, AMENDING CHAPTER 38, ARTICLE II (COLLECTIVE BARGAINING), SECTIONS 38-22 THROUGH 38-35 OF THE TOWN OF SILVER CITY MUNICIPAL CODE

WHEREAS, in 1975 and as later amended in 2008, the Town of Silver City adopted an ordinance which governed the labor-management relations between the Town, certain of its employees, and any labor or employee organization representing or seeking to represent such employees; and

WHEREAS, such ordinances are codified in the Town’s Municipal Code in Chapter 38, Article II; and

WHEREAS, as part of the comprehensive regulation of labor- management relations, the aforementioned ordinances created a Local Labor-Management Relations Board (hereinafter, the “Local Board”) all consistent with the statutes, rules, and regulations of the State; an,

WHEREAS, the New Mexico State Legislature has passed certain legislation which affects the substance of Article, including the creation and application of certain new rules and regulations which are incumbent upon the Town to adopt in order to keep and maintain its Local Board; and

WHEREAS, being the intention of the Town of Silver City to keep and maintain its Local Board, the Town Council has adopted the amendments described herein to comport with State Statutory mandates and declares its intention to continue the existence and operation of its Local Board; and

WHEREAS, Ordinance No. 1290 was adopted for the same purpose on May 12, 2020 and was determined to have been adopted prematurely, and is therefore repealed; and

WHEREAS, the Town Council of the Town of Silver City finds that the amendments to the Town's Municipal Code as made herein are necessary for the health, safety and welfare of the Town;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO, that:

As a matter of first concern and in compliance with §10-7E-10 NMSA 1978, the Town Council hereby affirms that the Town of Silver City intends to, and shall continue to, maintain and operate its Local Board, consistent with the rules and regulations expressed and codified in the Town of Silver City Municipal Code, Chapter 38, §§38-22 et seq., as amended, and directs the Town Manager to forward a copy of this Ordinance and any other documents as required to be submitted to the State of New Mexico Labor Relations Board. The Town Council adopts the following amendments to assure consistency between its Municipal Code provisions and those provisions mandated by the State Legislature to take effect July 1, 2020.

Chapter 38, Section 38-22 is hereby deleted and replaced as follows:

Section 38-22. Definitions. All definitions set forth in NMSA 1978, §10-7E-4 are hereby incorporated herein by reference as if fully set forth in this article.

Chapter 38, Section 38-26 (a) and its title is hereby deleted and replaced as follows:

Section title is to be **"Rights of public employees."**

(a) Public employees, other than management employees and confidential employees, may form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by public employees without interference, restraint or coercion and shall

have the right to refuse those activities. Further, public employees have the right to engage in other concerted activities for mutual aid or benefit. This right shall not be construed as modifying the prohibition on strikes set forth in Section 10-7E-21 NMSA 1978.

Section 38-26 (c) is deleted and replaced with:

(c) There shall be no union shop, agency shop, or other compulsory forms of unionization negotiated into any collective bargaining agreement with the Town government.

Section 38-26 (g) is deleted and replaced with:

(g) The Town shall provide an exclusive representative of an appropriate bargaining unit reasonable access to employees within the bargaining unit, including the following:

(1) for purposes of newly hired employees in the bargaining unit, reasonable access includes:

(a) the right to meet with new employees, without loss of employee compensation or leave benefits; and

(b) the right to meet with new employees within thirty days from the date of hire for a period of at least thirty minutes but not more than one hundred twenty minutes, during new employee orientation or, if the public employer does not conduct new employee orientations, at individual or group meetings; and

(2) for purposes of employees in the bargaining unit who are not new employees, reasonable access includes:

(a) the right to meet with employees during the employees' regular work hours at the employees' regular work location to investigate and discuss grievances, workplace-related complaints and other matters relating to employment relations; and

(b) the right to conduct meetings at the employees' regular work location before or after the employees' regular work hours, during meal periods and during any other break periods.

A new subsection (h) under Section 38-26 is added, which states:

(A) The Town shall provide the information in the employer's records to the exclusive representative within ten days from the date of hire for newly hired employees in an appropriate bargaining unit, and every one hundred twenty days for employees in the bargaining unit who are not newly hired employees, in an editable digital file format agreed to by the exclusive representative, the following information for each employee in an appropriate bargaining unit:

(1) the employee's name and date of hire;

(2) contact information, including:

(a) cellular, home and work telephone numbers;

(b) a means of electronic communication, including work and personal electronic mail addresses; and

(c) home address or personal mailing address; and

(3) employment information, including the employee's job title, salary and work site location.

(B) The information shall be kept confidential by the labor organization and its employees or officers. Apart from the disclosure required by this subsection, and notwithstanding any provision contained in the Inspection of Public Records Act, the public employer shall not disclose the information described herein this section, or public employees' dates of birth or social security numbers to a third party.

A new subsection (i) under Section 38-26 is added, which states:

The Town shall permit an exclusive representative to use the Town's facilities or property, whether owned or leased by the employer, for purposes of conducting meetings with the represented employees in the bargaining unit. An exclusive representative may hold the meetings described in this section at a time and place set by the exclusive representative. The exclusive representative shall have the right to conduct the meetings without undue interference and may establish reasonable rules regarding appropriate conduct for meeting attendees. The meetings described in this section shall not interfere with the public employer's operations.

A new subsection (j) under Section 38-26 is added, which states:

(j). An exclusive representative shall have the right to use the electronic mail systems or other similar communication systems of a public employer to communicate with the employees in the bargaining unit regarding:

(1) collective bargaining, including the administration of collective bargaining agreements;

(2) the investigation of grievances or other disputes relating to employment relations;
and

(3) matters involving the governance or business of the labor organization.

(4) Nothing in this section prevents a public employer from providing an exclusive representative access to employees within the bargaining unit beyond the reasonable access required under this section or limits any existing right of a labor organization to communicate with public employees.

Section 38-30(a) is deleted in its entirety and replaced with:

(a) The Town government or its representative(s) shall not:

(1) discriminate against a public employee with regard to terms and conditions of

employment because of the employee's membership in a labor organization;

(2) interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act or use public funds to influence the decision of its employees or the employees of its subcontractors regarding whether to support or oppose a labor organization that represents or seeks to represent those employees, or whether to become a member of any labor organization; provided, however, that this subsection does not apply to activities performed or expenses incurred:

(a) addressing a grievance or negotiating or administering a collective bargaining agreement;

(b) allowing a labor organization or its representatives access to the public employer's facilities or properties;

(3) performing an activity required by federal or state law or by a collective bargaining agreement;

(4) negotiating, entering into or carrying out an agreement with a labor organization;

(5) paying wages to a represented employee while the employee is performing duties if the payment is permitted under a collective bargaining agreement; or

(6) representing the public employer in a proceeding before the board or a local board or in a judicial review of that proceeding;

(7) dominate or interfere in the formation, existence or administration of a labor organization;

(8) discriminate in regard to hiring, tenure or a term or condition of employment in order to encourage or discourage membership in a labor organization;

(9) discharge or otherwise discriminate against a public employee because the employee

has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization;

(10) refuse to bargain collectively in good faith with the exclusive representative;

(11) refuse or fail to comply with a provision of the Public Employee Bargaining Act or board rule; or

(12) refuse or fail to comply with a collective bargaining agreement.

Section 38-33. Negotiating procedures., subsection (f) *Resolving disputes.* is deleted in its entirety and replaced with a new title and the following subsections, which shall read:

(f) *Impasse and resolving disputes.*

(1) The following impasse procedures shall be followed by the Town and labor representatives.

(a) if an impasse occurs, either party may request from the board or local board that a mediator be assigned to the negotiations unless the parties can agree on a mediator. A mediator with the federal mediation and conciliation service shall be assigned by the board or local board to assist negotiations unless the parties agree to another mediator; and

(2) if the impasse continues after a thirty-day mediation period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. One arbitrator shall be chosen by the parties by alternately striking names from such list. Who strikes first shall be determined by coin toss. The arbitrator shall render a final, binding, written decision resolving unresolved issues pursuant to Subsection H of Section 10-7E-17 NMSA 1978 and the Uniform Arbitration Act no later than thirty days after the arbitrator has been notified of selection by the parties. The arbitrator's decision shall be limited to a selection of one of the two

parties' complete, last, best offer. The costs of an arbitrator and the arbitrator's related costs conducted pursuant to this subsection shall be shared equally by the parties. Each party shall be responsible for bearing the cost of presenting its case. The decision shall be subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

(3) The Town's representative(s) may enter into a written agreement with the exclusive representative setting forth an alternative impasse resolution procedure.

(4) In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. However, this shall not require the public employer to increase any employees' levels, steps or grades of compensation contained in the existing contract.

Section 38-34 (a) is amended to include two new subsections, (5) and (6) which shall read:

(5) The board has the power to enforce provisions of the Public Employee Bargaining act through the imposition of appropriate administrative remedies, actual damages related to dues, back pay including benefits, reinstatement with the same seniority status that the employee would have had but for the violations, declaratory or injunctive relief or provisional remedies, including temporary restraining orders or preliminary injunctions. No punitive damages or attorney fees may be awarded by the board.

(6) The board shall maintain current versions of its rules on the Town's website, along with a current listing of the members of the board and shall within 30 days notify the State Board of any revisions of its rules or change in its membership.

Section 38-34 b. is deleted in its entirety and replaced with:

(b) *State rules to govern.* The rules adopted by the board shall be consistent with the rules promulgated by the New Mexico Public Employee Labor Relations Board. Upon a conflict

between any rule or regulation in this Article and the applicable State rules, such conflict shall be decided in favor of the State rules.

PASSED, ADOPTED AND APPROVED by vote of the Council of the Town of Silver City, Grant County, New Mexico, this 8th day of December, 2020.

(Seal)

TOWN OF SILVER CITY

/s/ _____
Ken Ladner, Mayor

Attest:

/s/ _____
Ann L. Mackie, Town Clerk