

ORDINANCE 1326

AN ORDINANCE ADDING SECTIONS 22-31 THROUGH 22-39, ARTICLE III, CHAPTER 22, HEALTH, TO THE MUNICIPAL CODE OF THE TOWN OF SILVER CITY, ALLOWING PERSONS TO SAFELY LEAVE INFANTS NOT MORE THAN NINETY DAYS (90) OF AGE OR LESS, AT SAFE HAVEN SITES, OR IN SAFETY DEVICES FOR SURRENDER, WITHOUT CRIMINAL PROSECUTION FOR ABANDONMENT OR ABUSE OF A CHILD; AND ALLOWING THE INSTALLATION AND OPERATION OF SAFETY DEVICES FOR THE SURRENDER OF INFANTS.

Co- Sponsored by Councilor Guadalupe E. Cano and Councilor Rudy Bencomo.

WHEREAS, the State of New Mexico has adopted The Safe Haven for Infants Act, NMSA 1978, Section 24-22-1, et seq.; and

WHEREAS, the Town of Silver City supports the Safe Haven for Infants Act and is committed to saving lives of children by providing parents with a safe and anonymous plan for surrender; and

WHEREAS, it is in the best interest of the Town and the public's health, safety and welfare to promote the safety of infants as provided by this ordinance.

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

1. Chapter 22, Health, Article III, Safe and Anonymous Surrender of Infants, Section 22-31 through Section 22-39, is added to the Municipal Code of the Town of Silver City, and shall read as follows:

ARTICLE III. - SAFE AND ANONYMOUS SURRENDER OF INFANTS.

Sec. 22-31. - Purpose.

The purpose of the Safe Haven for Infants Act and this town ordinance is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, ninety (90) days of age or less, at a safe haven site. The act and this ordinance are not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of parents.

Sec 22-32. - Definitions.

The below words and phrases, wherever used in this article, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. Words used in the

present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

"Baby box" or "infant safety device" means a Safe Haven Baby Box that is approved to be utilized for the surrender of an infant, as an alternative to the traditional hand over of an infant at a safe haven site.

"Fire station" means a fire station that is certified by the state fire marshal's office.

"Hospital" means an acute care general hospital or health care clinic licensed by the state.

"Indian child" or "Native American child" means an Indian child or Native American child as defined by the federal Indian Child Welfare Act of 1978.

"Infant" means a child no more than ninety (90) days old, as determined within a reasonable degree of medical certainty.

"Law enforcement agency" means a law enforcement agency of the town or state or a political subdivision of the state.

"Safe haven site" means a hospital, law enforcement agency or fire station that has staff on site at the time an infant is left at such a site or designated site by the town.

"Staff" means an employee, contractor, agent or volunteer performing services as required and on behalf of the safe haven site.

Sec. 22-33. - Leaving an infant.

- (a) A person may leave an infant with the staff of a safe haven site without being subject to criminal prosecution for abandonment if the infant was born within ninety (90) days of being left at the safe haven site, as determined within a reasonable degree of medical certainty, and if the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to NMSA 1978, Section 30-6-1. A person may also leave an infant in an approved Safe Haven Baby Box if they do not feel comfortable leaving the infant with staff of a safe haven site, pursuant to the same procedures as listed in the previous sentence.
- (b) A safe haven site may ask the person leaving the infant for the name of the infant's biological father or biological mother, the infant's name and the infant's medical history, but the person leaving the infant is not required to provide that information to the safe haven site.
- (c) The safe haven site is deemed to have received consent for medical services provided to an infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act or in accordance with procedures developed between the children, youth and families department and the safe haven site.

Sec. 22-34. - Leaving an infant.

- (a) A person may leave an infant with the staff of a safe haven site without being subject to criminal prosecution for abandonment if the infant was born within ninety (90) days of being left at the safe haven site, as determined within a reasonable degree of medical certainty, and if the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to NMSA 1978, Section 30-6-1. A person may also leave an infant in an approved Safe Haven Baby Box if they do not feel comfortable leaving the infant with staff of a safe haven site, pursuant to the same procedures as listed in the previous sentence.
- (b) A safe haven site may ask the person leaving the infant for the name of the infant's biological father or biological mother, the infant's name and the infant's medical history, but the person leaving the infant is not required to provide that information to the safe haven site.
- (c) The safe haven site is deemed to have received consent for medical services provided to an infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act or in accordance with procedures developed between the children, youth and families department and the safe haven site.

Sec. 22-35. - Safe haven site procedures.

- (a) A safe haven site shall accept an infant who is left at the safe haven site in accordance with the provisions of the Safe Haven for Infants Act.
- (b) In conjunction with the children, youth and families department, a safe haven site shall develop procedures for appropriate staff to accept and provide necessary medical services to an infant left at the safe haven site and to the person leaving the infant at the safe haven site, if necessary.
- (c) Upon receiving an infant who is left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act, the safe haven site may provide the person leaving the infant with:
 - (1) Information about adoption services, including the availability of private adoption services;
 - (2) Brochures or telephone numbers for agencies that provide adoption services or counseling services; and
 - (3) Written information regarding whom to contact at the children, youth and families department if the parent decides to seek reunification with the infant.

- (d) A safe haven site shall ask the person leaving the infant whether the infant has a parent who is either a member of an Indian tribe or is eligible for membership in an Indian tribe, but the person leaving the infant is not required to provide that information to the safe haven site.
- (e) Immediately after receiving an infant in accordance with the provisions of the Safe Haven for Infants Act, a safe haven site shall inform the children, youth and families department that the infant has been left at the safe haven site. The safe haven site shall provide the children, youth and families department with all available information regarding the child and the parents which it has received or knows about, including the identity of the child and the parents, the location of the parents and the child's medical records.

Sec. 22-36. - Recognizing responsibilities of the children, youth and families department.

- (a) The children, youth and families department shall be deemed to have emergency custody of an infant who has been left at a safe haven site according to the provisions of the Safe Haven for Infants Act.
- (b) Upon receiving a report of an infant left at a safe haven site pursuant to the provisions of the Safe Haven for Infants Act, the children, youth and families department shall immediately conduct an investigation, pursuant to the provisions of the Abuse and Neglect Act.
- (c) When an infant is taken into custody by the children, youth and families department, the department shall make reasonable efforts to determine whether the infant is an Indian child. If the infant is an Indian child:
 - (1) The child's tribe shall be notified as required by NMSA 1978, Section 32A-1-14, and the federal Indian Child Welfare Act of 1978; and
 - (2) Pre-adoptive placement and adoptive placement of the Indian child shall be in accordance with the provisions of NMSA 1978, Section 32A-5-5, regarding Indian child placement preferences.
- (d) The children, youth and families department shall perform public outreach functions necessary to educate the public about the Safe Haven for Infants Act, including developing literature about that act and distributing it to safe haven sites.
- (e) An infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act shall presumptively be deemed eligible and enrolled for Medicaid benefits and services.

Sec. 22-37. - Procedure if reunification is sought.

- (a) A person established as a parent of an infant previously left at a safe haven site shall have standing to participate in all proceedings regarding the child pursuant to the provisions of the Abuse and Neglect Act.
- (b) If a person not previously established as a parent seeks reunification with an infant previously left at a safe haven site and the person's DNA indicates parentage of the infant, that person shall have standing to participate in all proceedings regarding the infant pursuant to the provisions of the Abuse and Neglect Act.

Sec. 22-38. - Immunity.

A safe haven site and its staff are immune from criminal liability and civil liability for accepting an infant in compliance with the provisions of the Safe Haven for Infants Act but not for subsequent negligent medical care or treatment of the infant.

Sec. 22-39. - Miscellaneous.

This chapter does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of the ordinance from which this chapter is derived.

PASSED, ADOPTED AND APPROVED by vote of the Council of the Town of Silver City, Grant County, New Mexico, this 30th day of January, 2024.

TOWN OF SILVER CITY

(Seal)

/s/ _____
Ken Ladner, Mayor

Attest:

/s/ _____
Alfred Sedillo, Town Clerk