

City of Belen Ordinance No. 2022-19

AN ORDINANCE ADOPTING PROCEDURES FOR SAFE AND ANONYMOUS SURRENDER OF INFANTS.

WHEREAS, the City of Belen is committed to saving the lives of children by providing parents in crisis with a safe and anonymous plan for surrender of infants;

WHEREAS, the State of New Mexico has enacted the Safe Haven for Infants Act which is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, ninety days of age or less, at a safe haven site pursuant to NMSA § 24-22-1.1, and

NOW THEREFORE, pursuant to NMSA §§ 24-22-1.1 through 24-22-8, the City of Belen adopts the following ordinance for the safety of infants and providing immunity to a parent as well as eliminating unsafe and unlawful surrenders within City of Belen, New Mexico.

Section 1. Purpose

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

Section 2. 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.

- A. “fire station” means a fire station that is certified by the state fire marshal’s office;
- B. “hospital” means an acute care general hospital or health care clinic licensed by the state;
- C. “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;
- D. “infant” means a child no more than ninety days old, as determined within a reasonable degree of medical certainty;
- E. “law enforcement agency” means a law enforcement agency of the City or state or a political subdivision of the state;

F. “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;

E. “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 City; and

H. “staff” means an employee, contractor, agent or volunteer performing services as required and on behalf of the safe haven site or designated agent/contractor by the City through a lease agreement.

Section 3. 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 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 Section 30-6-1 NMSA 1978. 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.

Section 4. 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, including the identity of the child and the parents, the location of the parents and the child's medical records.

Section 5. 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 Section 32A-1-14 NMSA 1978 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 Section 32A-5-5 NMSA 1978 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.

Section 6. 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.

Section 7. 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.

Section 8. Miscellaneous

This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED, ADOPTED AND APPROVED BY GOVERNING BODY OF THE City of Belen, NM, and this 7th day of November 2022.

[Signature]
Attest:
[Signature]
Dorothy Flores, City Clerk/Treasurer

[Signature]
Honorable Robert C. Noblin, Mayor