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Council Action and Executive Summary

Item # 14 **Ordinance/Resolution#** 2715

For Meeting of May 19, 2014 (Ordinance First Reading Date)

For Meeting of June 2, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE ENACTING THE LAS CRUCES MINIMUM WAGE AND CREATING LCMC 1997, SECTIONS 14-60 THROUGH 14-68 AND DIVISION III THE LAS CRUCES MINIMUM WAGE ACT.

PURPOSE(S) OF ACTION:

To enact an ordinance.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Monica Campbell	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

During the past months, the Las Cruces City Council has openly discussed a minimum wage ordinance for the City of Las Cruces. Various forms of ordinance have been reviewed. On May 5, 2014, during a regular City Council meeting, District 1 Councillor Miguel Silva, assisted by District 6 Councillor Ceil Levatino, submitted a "Draft Minimum Wage Ordinance" to the Council. Following the submittal, staff was directed to prepare a minimum wage ordinance.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed ordinance to be codified as Chapter 14 – Human Rights, Article III. Minimum Wage, Sections 14-60 through 14-68.
3. Attachment "A", Draft Minimum Wage Ordinance, City of Las Cruces, dated May 5, 2014.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted? N/A			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will enact the The City of Las Cruces' Minimum Wage Ordinance.
2. Vote "No"; this will mean that the City of Las Cruces will not have a minimum wage ordinance.
3. Vote to "Amend"; this could include the modification of various elements of the proposed ordinance.
4. Vote to "Table"; this could allow further direction to staff.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 14-030
ORDINANCE NO. 2715

AN ORDINANCE ENACTING THE LAS CRUCES MINIMUM WAGE AND CREATING LCMC 1997, SECTIONS 14-60 THROUGH 14-68 AND DIVISION III THE LAS CRUCES MINIMUM WAGE ACT.

The City Council is informed that:

WHEREAS, during the past months, the Las Cruces City Council has openly discussed creating a minimum wage ordinance for the City of Las Cruces; and

WHEREAS, various forms and drafts of an ordinance have been reviewed; and

WHEREAS, staff, upon direction, prepared a minimum wage ordinance bsed upon a draft ordinance submitted by two City Councillors.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the City of Las Cruces' Minimum Wage Ordinance, to be codified as Las Cruces Municipal Code, 1997, Chapter 14 – Human Rights, Division III, Sections 14-60 through 14-68, as shown on Exhibit "A" attached hereto, is hereby enacted.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the hereinabove.

DONE AND APPROVED on this _____ day of _____, 20____.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Levatino: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

Exhibit "A"

CHAPTER 14 – HUMAN RIGHTS

ARTICLE III. MINIMUM WAGE

Section 14-60. Short title.

This ordinance may be cited as "The City of Las Cruces' Minimum Wage Ordinance."

Section 14-61. Authority.

This Minimum Wage Ordinance is adopted pursuant to the general welfare and police powers conferred upon the City of Las Cruces by §3-17-1 et seq. and §3-18-1 et seq. NMSA 1978, pursuant to the powers conferred upon the City of Las Cruces by New Mexico Constitution, Article X §§6(D) and (E), the Municipal Charter Act §3-15-1 et seq., and *New Mexicans for Free Enterprise v. The City of Santa Fe*, 2006-NMCA-007.

Sections 14-62. Definitions.

For purposes of the article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(a) *City* means the City of Las Cruces.

(b) *City Council* means the City Council is the governing body of the City of Las Cruces as defined by LCMC 1997 (Charter) §2.01 et seq.

(c) *Employer* means any person who is required to have a business registration from the City and who directly or indirectly or through an agent or any other person including, but not limited to, through a subsidiary or through the services of a temporary agency, a staffing agency, a building services contractor, or any similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. "Employer" shall include the City.

(d) *Employee* means any person who performs work for an Employer for monetary compensation for at least two (2) hours in a given week within the limits of the City. "Employee" shall include persons who perform work for an Employer on a full-time, part-time, seasonal or temporary basis. Employee shall not include any person who is excluded from the definition of employee under NMSA §§50-4-21(C) (3)-(5), (7) of the New Mexico Minimum Wage Act, except that persons employed by the City are employees. "Employee" shall not include interns working for an accredited school, college, or university pursuant to a work-study program while attending that school, college or university. "Employee" shall not include:

1. An individual employed in domestic service in or about a private home;
2. An individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;
3. An individual employed by the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 14-63, persons employed by the City are employees;
4. An individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to an individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of the work performed by the individual;
5. Salespersons or employee compensated upon piecework, flat rate schedules or commission basis;
6. Students regularly enrolled in primary or secondary schools working after school hours or on vacation;
7. Registered apprentices and learners otherwise provided by law;
8. Persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;
9. Persons eighteen years of age or under who are not graduates of a secondary school
10. Interns working for an employer for academic credit in connection with a course of study at an accredited school, college or university or employees working for an accredited school, college or university pursuant to a work-study program while attending that school, college or university; and
11. "Employee" shall not include any person who has received a certificate from the state labor commissioner pursuant to § 50-4-23 NMSA 1978 or § 50-4-21(C)(12) NMSA 1978.

(e) *Minimum wage* or *minimum wage rate* means the minimum hourly rates of monetary compensation for work as specified in this ordinance.

(f) *Tip* means a sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. "Tip" shall include only tips actually received by an Employee as money belonging to him or her. Where Employees practice tip pooling or splitting, as where wait staff give a portion of their tips to bus persons shall be considered "Tips" of the individual waiters or waitresses and those given the bus persons, those shall be considered "Tips" of the individual Employee

who retains them. A compulsory charge for service imposed on a customer by an Employer's establishment shall not be considered a "Tip" unless it is distributed by the Employer to its Employees.

(g) *Tipped employee* means any Employee engaged in an occupation in which he or she customarily and regularly receives Tips from customers.

(h) *Tipped minimum wage* means the minimum cash wage that a Tipped Employee must receive from him or her Employer, as provided under Section 14-63(b).

Section 14-63. Minimum wage.

(a) Minimum Wage Payment Required. Except as provided herein, Employers shall pay all Employees no less than Minimum Wage for each hour worked within the incorporated limits of the City. The Minimum Wage in the City is Seven Dollars and Fifty Cents ($7.50) per hour, the State Minimum Wage. The Minimum Wage in the City Shall be adjusted as provided below:

1 The minimum wage shall be increased by Fifty Cents ($0.50) per hour, to Eight Dollars ($8.00) per hour, effective July 1st, 2015; and a second increase of Fifty Cents ($0.50) per hour, to Eight Dollars and Fifty Cents ($8.50) per hour, effective January 1st 2016;

2 Annual Cost of Living Adjustment. The minimum wage shall be increased on January 1, 2017 and on January 1st of successive years by the City Council of Las Cruces based on the increase, if any, in the cost of living, and not to exceed to 2% rounded to the nearest multiple of five cents. The increase in the cost of living shall be calculated based on the annual percentage increase, if any, of the U.S. Consumer Price Index – Urban Wage Earners and Clerical Workers, or its successor index as published by the U.S. Department of Labor or its successor agency. The City shall publish the adjusted Minimum Wage for the forthcoming year on its Internet homepage by October 15 of each preceding year, and the adjusted Minimum Wage shall become effective on January 1st of the forthcoming year.

3 The City Council of Las Cruces will review the Minimum Wage Ordinance in June 2016, and every subsequent four (4) years, in order to assess its continuing adequacy.

(b) *Tipped Employee Minimum Wage.* For Tipped Employees, the Tipped Minimum Wage shall be Two Dollars and Thirteen Cents ($2.13) per hour. If an employee's tips combined with the Tipped Minimum Wage do not equal the minimum hourly wage established in Section 14-63(a), the employer shall make up the difference. If an employee's tips combined with Tipped Minimum Wage exceeds the Minimum Wage established in Section 14-63(a), the employee shall retain the Tipped Minimum Wage and all of the Tips.

(c) *Health and Child Care Consideration.* For employers who provide healthcare and/or childcare benefits equal to or in excess of an annualized cost of Two-Thousand Five Hundred and no/100 Dollars ($2,500.00), beginning April 1, 2014 and each year thereafter, the Minimum Wage for that employee shall be an hourly rate of One and no/100 Dollar ($1.00) less than the current Minimum Wage otherwise applicable to employees who do not receive such benefits.

Section 14-64. Notice, posting and records.

(a) Notice to Employees. Every employer shall post in a conspicuous place at any workplace or job site where any Employee works a notice published each year by the City Community Development Department informing Employees of the current Minimum Wage rates and of their rights under this ordinance. Every Employer shall post such notices in English and Spanish.

(b) Records. Employers shall maintain payroll records showing the hours worked daily and the wages paid to all Employees. Employers shall retain payroll records pertaining to Employees for a period of three years. When the Employer uses tips to meet the Minimum Wage for an Employee, the Employer shall retain payroll records pertaining to Employees for a period of three years. When the Employer uses tips to meet the Minimum Wage for an Employee, the Employer must have a Tip declaration signed by the Tipped Employee for each pay period.

Section 14-65. Implementation and enforcement.

(a) When businesses do not pay a livable wage, the community bears the cost in the form of increased demand for taxpayers-funded social services including homeless shelters, soup kitchens and healthcare for the uninsured. Coupled with rising consumer costs, low wages reduce the ability of low- and moderate-income residents to access affordable housing. As a result, the City has had to invest significant tax dollars to support affordable housing including funding to nonprofit organizations, purchasing land, building infrastructure and waiving fees. In addition, the City has allocated significant tax dollars to operate after school and summer recreation programs and to support nonprofit organizations offering an array of human services and children and youth services, all of which are needed by very low-income residents and their families. Therefore the Minimum Wage increase indicated by Section 14-63 addresses this public concern.

(b) It is a public nuisance for Employers to violate this Ordinance by paying their Employees below the Minimum Wage as specified by Section 14-63.

(c) To abate the public nuisance of Employers paying Employees below the Minimum Wage of Section 14-63, any Employee receiving less than the wage the Employee is entitled under this Ordinance to bring a civil action in the Third Judicial District Court, County of Dona Ana, State of New Mexico pursuant to §30-8-8, NMSA 1978. Upon prevailing, the aggrieved Employee shall recover the balance of the wages owed, interest thereon, and reasonable attorney's fees and costs.

Section 14-66. Relationship to other requirements.

This Ordinance provides for payment of Minimum Wage rates and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, and policy or standard that provides for payment of higher or supplemental wages, benefits, or protections. Nothing contained in this ordinance prohibits an Employer from paying more than the Minimum Wage rates established under this ordinance.

Section 14-67. Severability clause.

If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 14-68. Effective clause.

This Ordinance shall take effect five days after it is published as required by Section 3-17-5.B., NMSA 1978.

Section 1. SHORT TITLE. This ordinance may be cited as "The City of Las Cruces' Minimum Wage Ordinance."

Section 2. was copied from the Santa Fe Living Wage ordinance. The last piece in italics has been added separately, for the Las Cruces draft which was based on the suggestion City Legal Staff.

Section 2. AUTHORITY. This Minimum Wage Ordinance is adopted pursuant to the general welfare and police powers conferred upon the city of Las Cruces by §3171 et seq. and §3181 et seq. NMSA 1978, pursuant to the powers conferred upon the city of Las Cruces by New Mexico Constitution, Article X §§6(D) and (E) and the Municipal Charter Act §3151 et seq., and *New Mexicans for Free Enterprise v. The City of Santa Fe, 2006-NMCA-007.*

Section 3. DEFINITIONS.

A. CITY. The City of Las Cruces

B. CITY COUNCIL. The City Council is the governing body of the City of Las Cruces as defined by CMC 197 (Charter) § 2.01 et seq.

C. EMPLOYER.

Any person, who is required to have a business registration from the City and who directly or indirectly or through an agent or any other person including, but not limited to, through a subsidiary or through the services of a temporary services agency, a staffing agency, a building services contractor, or any similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. "Employer" shall include the City *but shall not include the State or the United States, or any political subdivision of the State.*

Are NMSU, Dona Ana County, and political subdivisions of the state to be included like the Animal Services Center of the Mesilla Valley, South Central Solid Waste District -- included or excluded?

D. EMPLOYEE.

Any person who performs work for an Employer for monetary compensation for at least eight (8) hours in a given week within the incorporated limits of the City. "Employee" shall include persons who perform work for an Employer on a full-time, part-time, seasonal, or temporary basis.

Employee shall not include

These exclusions are from the State ordinance – but spelled out instead of being referenced so they are clear and stand on their own. 1, 2, 6, 8, 9, and 10 are not in the Bernalillo ordinance, but are in CAFe's and others.

1. An individual employed in domestic service in or about a private home;

2. An individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;

3. An individual employed by the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 4, persons employed by the City are employees.

4. An individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to an individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of the work performed by the individual;

5. Salespersons or employees compensated upon piecework, flat rate schedules or commission basis;

6. Students regularly enrolled in primary or secondary schools working after school hours or on vacation;

7. Registered apprentices and learners otherwise provided by law

8. Persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;

9. Persons eighteen years of age or under who are not graduates of a secondary school

10. Interns working for an Employer for academic credit in connection with a course of study at an accredited school, college or university or employees working for an accredited school, college or university pursuant to a work-study program while attending that school, college or university.

11. "Employee" shall not include any person who has received a certificate from the state labor commissioner pursuant to § 50-4-23 NMSA 1978 or § 50-4- 21(C)(12) NMSA 1978.

This statement is from the State and Bernalillo Ordinances. Need legal review to determine if they are consistent with the Las Cruces requirements.

The first refers to persons with multiple disabilities and other persons whose earning capacity is so severely impaired that they are unable to engage in competitive employment, and workers with a disability who are engaged in work that is incidental to training or evaluation programs;

The second refers to a variety of jobs related to agriculture.

E. MINIMUM WAGE, MINIMUM WAGE RATE.

The minimum hourly rates of monetary compensation for work as specified in this ordinance.

F. TIP

A sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. "Tip" shall include only tips actually received by an Employee as money belonging to him or her and reported as income for Federal Income Contributions Act (FICA) purposes. Where Employees practice tip pooling or splitting, as where wait staff give a portion of their tips to bus persons, both the actual amounts retained by the waiters or waitresses and those given the bus persons shall be considered "Tips" of the individual Employee who retains them. A compulsory charge for service imposed on a customer by an Employer's establishment shall not be considered a "Tip" unless it is distributed by the Employer to its Employees. Nothing in this ordinance shall be construed to prohibit tip pooling among tipped employees.

G. TIPPED EMPLOYEE.

Any Employee engaged in an occupation in which he or she customarily and regularly receives Tips.

H. TIPPED MINIMUM WAGE.

The minimum cash wage that a Tipped Employee must receive from his or

her Employer, as provided under Section 4.

Section 4. MINIMUM WAGE

A. MINIMUM WAGE PAYMENT REQUIRED.

Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage for each hour worked within the incorporated limits of the City. The Minimum Wage in the City is Seven Dollars and Fifty Cents ($7.50) per hour, the State Minimum Wage. The Minimum Wage in the City shall be adjusted as provided below:

This section is reworded from the original draft to increase clarity, but with no changes to substance.

1.a. The minimum wage shall be increased by Fifty Cents ($0.50) per hour, to Eight Dollars ($8.00) per hour, effective July 1st, 2015;

1.b. and a second increase of Fifty Cents ($0.50) per hour, to Eight Dollars and Fifty Cents ($8.50) per hour, effective January 1st, 2016;

2. Annual Cost of Living Adjustment. The minimum wage shall be increased on January 1st, 2017, and on January 1st of successive years by the City Council, based on the increase, if any, in the cost of living, and rounded to the nearest multiple of five cents, not to exceed 2%. The increase in the cost of living shall be calculated based on the percentage increase, if any, of the Consumer Price Index or its successor index as published by the U.S. Department of Labor or its successor agency. The City shall publish the adjusted Minimum Wage for the forthcoming year on its Internet home page by October 15 of each preceding year, and it shall become effective on January 1 of the forthcoming year.

3. The City Council shall review this Minimum Wage Ordinance in June, 2016, and every four (4) years thereafter, in order to assess its continuing adequacy.

C. TIPPED EMPLOYEE MINIMUM WAGE

For Tipped Employees, the Tipped Minimum Wage shall be Two Dollars and Thirteen Cents ($2.13) per hour. If an employee's tips combined with the Tipped Minimum Wage do not equal the Minimum Wage established in section A, the employer shall make up the difference. If an employee's tips combined with the Tipped Minimum Wage exceeds the Minimum Wage established in section A, the

employee shall retain the Tipped Minimum Wage and all of the tips.

D. HEALTH AND CHILD CARE CONSIDERATION

For Employers who provide healthcare and/or childcare benefits to an Employee during any pay period for which the Employer pays an amount for those benefits equal to or in excess of an annualized cost of $2500.00, beginning July 1, 2015, and each year thereafter, the Minimum Wage for that employee shall be an hourly rate of $1.00 less than the current Minimum Wage otherwise applicable to employees who do not receive such benefits.

Section 5. NOTICE, POSTING AND RECORDS.

A. NOTICE TO EMPLOYEES.

Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works a notice published each year by the City or its designee informing Employees of the current Minimum Wage rates and of their rights under this ordinance. Notices shall be in English and Spanish.

B. RECORDS.

Employers shall maintain payroll records showing the hours worked daily by and the wages paid to all Employees. Employers shall retain payroll records pertaining to Employees for a period of three years. When the Employer uses tips to meet the Minimum Wage for an Employee, the Employer must have a Tip declaration signed by the Tipped Employee for each pay period.

Section 6. IMPLEMENTATION AND ENFORCEMENT.

A.

It is a public nuisance for Employers to violate this ordinance by paying their Employees below the Minimum Wage as specified by Section 4.

B.

To abate the public nuisance of Employers paying Employees below the Minimum Wage of Section 4, any Employee receiving less than the wage the Employee is entitled to under this Ordinance may bring a civil action in the Third Judicial District Court pursuant to § 30-8-8 NMSA, 1978. Upon prevailing the aggrieved Employee shall recover the balance of the wages owed, interest thereon, and reasonable attorney's fees and costs.

Section 7. RELATIONSHIP TO OTHER REQUIREMENTS.

This ordinance provides for payment of Minimum Wage rates and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages, benefits, or protections. Nothing contained in this ordinance prohibits an Employer from paying more than the Minimum Wage rates established under this ordinance.

Section 8. SEVERABILITY CLAUSE.

If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 9. EFFECTIVE DATE.

This ordinance shall take effect five days after final adoption by the City Council.