City of Las Cruces
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 20 **Ordinance/Resolution#** 2726

For Meeting of August 18, 2014 (Ordinance First Reading Date)

For Meeting of September 8, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: **AN ORDINANCE ENACTING A NEW ARTICLE IN CHAPTER 14 – HUMAN RIGHTS, OF THE LAS CRUCES MUNICIPAL CODE, SETTING MINIMUM WAGES FOR CERTAIN EMPLOYEES WORKING WITHIN THE CITY LIMITS OF LAS CRUCES; PROVIDING FOR INDEXING THE MINIMUM WAGE TO INFLATION; ESTABLISHING PROCEDURES FOR ENFORCEMENT.**

PURPOSE(S) OF ACTION:

Create a new "Minimum Wage Ordinance."

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Esther Martinez-Carrillo	**Department/Section:** Legal/City Clerk	**Phone:** 541-2115
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On August 4, 2014, City Council reviewed and approved the certification of signatures on an initiative petition proposing adoption of an ordinance setting minimum wages.

City Charter § 8.06 states that when an initiative petition has been determined sufficient, the City Council shall promptly consider the proposed initiative ordinance. If the City Council fails to adopt the proposed initiative ordinance in its entirety within sixty (60) days after the date the petition is finally determined sufficient, it shall promptly submit the proposed ordinance to the voters of the city.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", "The Las Cruces Minimum Wage Ordinance."

(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 adopt a new "Minimum Wage Ordinance."
2. Vote "No"; this will deny the new "Minimum Wage Ordinance" and require City Council to approve a Resolution Calling for a Special Municipal Election.
3. Vote to "Amend"; this is not an option.
4. Vote to "Table"; this ordinance may be table to a date no later than October 3, 2014.

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. 15-007
ORDINANCE NO. 2726

AN ORDINANCE ENACTING A NEW ARTICLE IN CHAPTER 14 – HUMAN RIGHTS, OF THE LAS CRUCES MUNICIPAL CODE, SETTING MINIMUM WAGES FOR CERTAIN EMPLOYEES WORKING WITHIN THE CITY LIMITS OF LAS CRUCES; PROVIDING FOR INDEXING THE MINIMUM WAGE TO INFLATION; ESTABLISHING PROCEDURES FOR ENFORCEMENT.

The City Council is informed that:

WHEREAS, the federal and State minimum wage has been unchanged since 2009, at $7.25 and $7.50, respectively; and

WHEREAS, efforts to increase the minimum wage at the Federal and State level are unlikely to be successful in the foreseeable future; and

WHEREAS, the current base tip wage for many restaurant workers of $2.13 has been unchanged for over 20 years; and

WHEREAS, according to the US Census Bureau, approximately twenty-two percent of the Las Cruces population lived below the poverty level between 2008 and 2012; and

WHEREAS, the current minimum wage levels result in many low wage workers living below the poverty level and require public assistance and other services to compensate for the lack of a living wage; and

WHEREAS, the current minimum wage levels disadvantage many small businesses in Las Cruces because larger business establishments employ the great majority of minimum wage workers; and

WHEREAS, increasing the minimum wage in Las Cruces will inject millions of dollars into the local economy thereby allowing it to expand and resulting in more employment opportunities; and

WHEREAS, including employees of the City of Las Cruces in this minimum wage increase is both fair and will encourage other governmental entities to do likewise.

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

(I)

THAT Exhibit "A" which is attached hereto is hereby adopted and shall be referred to as "The Las Cruces Minimum Wage Ordinance."

(II)

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

DONE AND APPROVED this _____ day of _____, 20___.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

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

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. - DEFINITIONS.

For the purposes of this ordinance, the following definitions shall apply:

City shall mean the City of Las Cruces.

Employ includes to suffer or permit to work.

Employer includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interests of an employer in relation to an employee and shall include the City, businesses having contracts with the City in excess of $30,000 which provide services to or on behalf of the City, and businesses which are required to have a City issued business license, but does not include any other governmental entities.

Employee shall include any individual who is employed by an employer within the City (including a former employee where appropriate) but shall not include:

(A) an individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;

(B) 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;

(C) students regularly enrolled in primary or secondary schools working after school hours or on vacation;

(D) registered apprentices and learners otherwise provided by law;

(E) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;

(F) persons eighteen years of age or under who are not graduates of a secondary school;

(G) G.I. bill trainees while under training.

Minimum Wage shall mean the minimum hourly rates of monetary compensation for work as specified in this ordinance.

Tipped employee means an employee who customarily and regularly receives more than thirty dollars ($30) per week in tips. Only those tips actually retained and reported as income for Federal Insurance Contributions Act (FICA) purposes by the employee shall be considered tips received by the employee. Tips resulting from Tip Pooling as defined in this section shall be considered as tips received by the employee. Nothing in this ordinance shall be construed to prohibit tip pooling among tipped employees.

Tipped minimum wage means the cash wage that a tipped employee must receive from their employer, as provided in Section 3.

Tip pooling means a written procedure which each tipped employee has read and signed, which sets out the method for sharing tips among tipped employees. The procedure must prohibit tips to be shared with the employer or any employee who is not a tipped employee.

Section 14-62. - MINIMUM WAGE PAYMENT REQUIREMENTS.

(a) All employers shall pay all employees no less than the minimum wage, and shall pay tipped employees no less than the tipped minimum wage, for each hour worked within the municipal limits of the City, as provided in this section.

(b) Beginning on January 1, 2015, the minimum wage shall be an hourly rate of $8.40 an hour; beginning on January 1, 2016 the minimum wage shall be an hourly rate of $9.20 an hour; and beginning on January 1, 2017 the minimum wage shall be an hourly rate of $10.10 an hour.

(c) Beginning January 1, 2018 and on January 1 of each year thereafter, the minimum wage provided for under this ordinance shall be adjusted by the increase, if any, in the cost of living. The increase in the cost of living shall be calculated based on the percentage increase, if any, as of August of the immediately preceding year over the level as measured by August of the previous year of the Consumer Price Index (All Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) for the West Region or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase, if any, rounded up to the nearest five cents. The City or its designee shall publish the adjusted minimum wage rate for the forthcoming year on its internet home page by October 15 of each year, and it

shall become effective on January 1 of the forthcoming year. The minimum wage shall not be reduced if the Consumer Price Index has decreased during any applicable year.

(d) A tipped employee shall be paid no less than the following tipped minimum wage:

1) beginning January 1, 2015, 40% of the minimum wage required in subsection (b) as of that date; 2) beginning January 1. 2016, 50% of the minimum wage required in subsection (b) as of that date, and 3) beginning January 1, 2017 and thereafter, 60% of the minimum wage required in subsection (b) as of that date, and as adjusted by subsection (c) after January 1, 2018. The tipped minimum wage, when combined with tips actually retained and reported as income for Federal Insurance Contributions Act (FICA) purposes by the employee, shall equal not less than the minimum wage as provided in subsection (b).

(e) An employee shall not be required to work more than forty hours in any week of seven days unless the employee is paid the higher of one and one half times the employee's regular hourly rate of pay or one and one half times the minimum wage as provided in subsection (b), for all hours worked in excess of forty hours. Tipped employees shall be paid the higher of their average hourly wage, including tips, for the previous forty hours worked, or one and one half times the minimum wage as provided in subsection (b).

Section 14-63. - 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 rate 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 by and the hourly wages paid to all employees, including tips. Employers shall retain such records for a period of not less than three years, and shall allow the City or its designee access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this ordinance. Where an employer does not maintain or retain adequate records documented wages paid or does not allow the City or its designee reasonable access to such records, it shall be presumed that the employer paid no more than the applicable federal, state, or City minimum wage, absent clear and convincing evidence otherwise.

Section 14-64. IMPLEMENTATION AND ENFORCEMENT

(a) It shall be a public nuisance for employers to violate this ordinance by: 1) paying their employees below the Minimum Wage as specified in Section 14-62.

(b) To abate the public nuisance specified in paragraph (a), any employee receiving less than the minimum wage 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 §30-30-8, NMSA 1978. Upon prevailing, any employee shall recover reasonable attorney's fees, and costs.

Nonexclusive Remedies and Penalties. The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from

seeking any other remedies, penalties, or relief provided by law.

Section 14-65. - EFFECT.

This ordinance provides for payment of a minimum wage rate 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 rate established under this ordinance.

Section 14-66. - SEVERABILITY.

The requirements and provisions of this ordinance and their parts, subparts and clauses are severable. In the event that any section, paragraph, sentence, clause, word or phrase of this ordinance, or any requirement imposed pursuant to it, or the application thereof to any person or circumstance, 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, or their application to other persons or circumstances.