

**THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY**

**ORDINANCE NO. 2014-1**

**AN ORDINANCE ESTABLISHING A LIVING WAGE  
WITHIN SANTA FE COUNTY; SPECIFYING EMPLOYERS SUBJECT TO THE  
LIVING WAGE; MAKING FINDINGS AS TO THE NECESSITY OF A LIVING WAGE;  
ESTABLISHING A PROHIBITION ON RETALIATION FOR REPORTING  
VIOLATIONS OF THE LIVING WAGE; PROVIDING FOR REMEDIES AND  
PENALTIES; SPECIFYING ENFORCEMENT OFFICERS; PROVIDING THE  
PROCESS TO BE EMPLOYED UPON COMPLAINTS OF VIOLATION;  
ESTABLISHING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY:**

**SECTION 1 – AUTHORITY.**

This Ordinance is enacted pursuant to its general police powers and the authority in NMSA 1978, § 4-37-1 (1975) (as amended) to make and publish any ordinance to discharge the powers not inconsistent with statutory or constitutional limitations placed on counties and to exercise powers that are necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the County's inhabitants, and NMSA 1978, § 4-37-3 (1993) (as amended) which permits prosecution of violations of County ordinances in any court of competent jurisdiction.

**SECTION 2 – DEFINITIONS.**

- A. “Apprentice” means a person bound to serve another for a specified time in order to learn some art, trade, profession, or business;
- B. “Base wage” means the minimum hourly rate of compensation that an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid pursuant to this Ordinance;
- C. “Commission” means a payment based on a percentage of the value of sales or other business done;
- D. “Living wage” means the minimum hourly rate of compensation that an employee shall be paid; and
- E. “Tip” means a gratuity earned by an employee for providing good service.

**SECTION 3 – APPLICABILITY.**

REC'D CLERK RECORDED 02/25/2014

A. This Ordinance shall be effective within the exterior unincorporated boundaries of Santa Fe County.

B. Santa Fe County government shall pay the living wage established by Section 5 of this Ordinance to its employees. However, the provisions of this sub-section are expressly limited by and subject to collective bargaining agreements between Santa Fe County and any bargaining unit.

C. As of the effective date of this Ordinance, contracts entered into by Santa Fe County government for services, including construction services, shall require the contractor to pay the living wage established by this Ordinance.

D. Businesses who undertake an economic development project and execute a project participation agreement with Santa Fe County shall pay the living wage established by this Ordinance for the duration of the project.

E. Businesses required by Santa Fe County Ordinance to have a business license from Santa Fe County shall pay the living wage established by this Ordinance.

F. For purposes of identifying who shall be paid the living wage established by this Ordinance, all individuals employed by or providing work to an employer identified in subsections A through E above, whether on a part-time, full-time or temporary basis, shall be considered to be an employee for purposes of this Ordinance. Also considered an employee for purposes of this Ordinance are contingent or contracted workers, and persons working through a temporary service, staffing or employment agency or similar entity. However, the following shall not be considered employees entitled to the living wage established by this Ordinance:

(1) An individual employed by the United States, the State or any political subdivision of the State other than Santa Fe County;

(2) 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;

(3) Apprentices in a registered apprentice program recognized by the State of New Mexico Apprenticeship and Training Committee or the Federal Bureau of Apprenticeship and Training, as well as any apprentice participating in an apprenticeship program providing significant instructional and practical experience and offered by a 501C(3).

(4) G.I. bill trainees during training;

(5) Temporary employees of an educational, charitable or religious youth camp or retreat where room and board is provided to the employee, or if a day camp, where board only is provided. To qualify under this exemption the employer must hold a valid certificate issued

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annually by the director of the labor relations division of the workforce solutions department of the State of New Mexico pertaining to exemption of seasonal employees;

(6) Any employee that is the parent, spouse, child or other member of the employer's immediate family; for purposes of this subsection, the employer shall include the principal stockholder of a family corporation;

(7) Interns working for a business for academic credit in connection with a course of study at an accredited school, college or university; and

(8) Persons working for a business in connection with a court-ordered community service program.

#### **SECTION 4 – FINDINGS.**

A. The Board of County Commissioners (hereinafter referred to as “the Board”) finds that the public welfare, health, safety and prosperity of citizens of Santa Fe County requires that citizens be paid a living wage sufficient to ensure a decent and healthy life;

B. The Board finds that establishing a mandatory minimum hourly wage will promote the public welfare, health, safety and prosperity by ensuring that citizens can better support and care for their families through their own efforts;

C. According to the United States Census Bureau:

(1) The average earnings per capita in Santa Fe County is twenty-three percent (23%) below the national average and the cost of living is eighteen percent (18%) above the national average; and

(2) Fifteen and six-tenths percent (15.6%) of residents in Santa Fe County lived below the poverty level between 2007 and 2011;

D. The Board finds that housing costs in Santa Fe County are higher than in most other parts of New Mexico, and low income workers spend a disproportionate percentage of their income sheltering themselves and their families;

E. The Board finds that when businesses do not pay adequate wages, the community bears the cost in the form of increased demand for taxpayer-funded social services;

F. Santa Fe County developed an affordable housing program that requires developers to include affordable homes in each subdivision, down payment assistance, assistance with roof repairs and other housing-related benefits;

G. The Board finds that it has expended public funds to provide summer programs for children residing in the County and to fund medical care for indigent residents; and

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H. The Board finds that it is in the public interest to require that employers benefiting from the opportunity to do business in Santa Fe County pay employees a living wage that is adequate to meet the basic needs of living in Santa Fe County.

#### **SECTION 5 – LIVING WAGE PAYMENT REQUIREMENTS.**

A. Except as provided in subsection B, the living wage paid to an employee shall be ten dollars and sixty-six cents (\$10.66) per hour. Beginning March 1, 2015, and each year thereafter, the living wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the Consumer Price Index for the Western Region for Urban Wage Earners and Clerical Workers. Santa Fe County shall post the living wage established by this Ordinance on the Santa Fe County website after this Ordinance becomes effective and prior to each adjustment of the living wage.

B. An employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips and/or commissions shall be paid at least a base wage equivalent to sixty percent of the living wage established by this Ordinance. Initially the base wage rate shall be six dollars and forty cents (\$6.40). That wage will increase simultaneous with each living wage increase. The employer may consider tips and commissions as part of wages, but the tips and commissions combined with the employer's payment of wages to the employee shall not equal less than the living wage as provided in subsection A of this section. In the event an employee earns insufficient tips and/or commissions combined with the base wage to receive a wage at least equal to the living wage established by this Ordinance, the employer shall make up the difference to ensure the employee receives a wage equal to the living wage established by this Ordinance. All tips received by such employee shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees. Where employees practice tip pooling or splitting (as where staff give a portion of their tips to bus persons), only the amount actually retained by each employee shall be considered part of that employee's wages.

#### **SECTION 6 - PROHIBITION AGAINST RETALIATION AND CIRCUMVENTION.**

It shall be unlawful for any employer or employer's agent or representative to discharge, demote, deny promotion to or in any way discriminate against an employee in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to this Ordinance or assisting another person to do so.

#### **SECTION 7 – REMEDIES AND PENALTIES.**

A. A person violating this Ordinance shall be guilty of a misdemeanor and, upon conviction, may be punished in accordance with NMSA 1978, Section 4-37-3 (1975)(as amended). A person violating any of the requirements of this Ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person as to which any such violation has occurred. This Ordinance may be enforced by a duly authorized code enforcement officer.

B. The County, any individual aggrieved by a violation of this Ordinance, or any entity whose members have been aggrieved by a violation of this Ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this Ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due, an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

C. The remedies provided in this Ordinance are not exclusive, and nothing in this Ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

#### **SECTION 8 – PROSPECTIVE APPLICATION.**

Nothing in this Ordinance shall be deemed to nor shall be applied in such a manner so as to have a constitutionally prohibited effect as an *ex post facto* law or impairment of an existing contract within the meaning of New Mexico Constitution, Article II, §19.

#### **SECTION 9 – SEVERABILITY.**

The requirements and provisions of this Ordinance are severable. In the event that any requirement, provision, part, subpart or clause of this Ordinance, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the Board that the remainder of the Ordinance be enforced to the maximum extent possible consistent with the objective of ensuring a living wage.

#### **SECTION 10 – NOTICE POSTING.**

Any holder of a Santa Fe County business license shall, as a condition of obtaining or holding a Santa Fe County business license, post and display in a prominent location next to its business license a notice, in English and Spanish, that the business is in compliance with the provisions of this Ordinance and shall include the text of Sections 3 and 5 of this Ordinance. Failure to comply with this Section shall be construed as a violation of this Ordinance and, in addition, shall be considered grounds for suspension, revocation, or termination of the business license.

#### **SECTION 11 – PROCEDURE.**

Violations of this Ordinance shall be investigated and prosecuted consistent with the process employed concerning alleged violations of the Sustainable Land Development Code, as amended. A complaint form for use in reporting violations of this Ordinance shall be available on the County webpage for use in reporting violations.

**SECTION 12 – EFFECTIVE DATE.**

This Ordinance shall become effective sixty (60) days after its adoption by the Board.

**PASSED, APPROVED AND ADOPTED** this 25<sup>th</sup> day of February, 2014.

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY**



*Daniel W. Mayfield*  
Daniel W. Mayfield, Chair

*Robert A. Anaya*  
Robert A. Anaya, Vice-Chair

*Liz Stefanics*  
Liz Stefanics, Commissioner

*Miguel M. Chavez*  
Miguel M. Chavez, Commissioner

*Kathy Holian*  
Kathy Holian, Commissioner

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss  
BCC ORDINANCE  
PAGES: 6  
I Hereby Certify That This Instrument Was Filed for  
Record On The 25TH Day Of February, 2014 at 04:03:48 PM  
And Was Duly Recorded as Instrument # 1730815  
Of The Records Of Santa Fe County  
Witness My Hand And Seal Of Office  
*Marcella Salazar* Geraldine Salazar  
Deputy County Clerk, Santa Fe, NM

**ATTEST:**

*Geraldine Salazar*  
Geraldine Salazar, Santa Fe County Clerk  
2/25/2014



**APPROVED AS TO FORM:**

*Stephen C. Ross*  
Stephen C. Ross, County Attorney

FILED 2/25/2014