



# Agenda

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Immigration Committee  
July 7, 2015  
Market Station Offices  
500 Market Street, Suite 200  
Round House Conference Room  
4:30pm to 6:00pm

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes – April 7, 2015, May 12, 2015
4. Announcements
5. Community Comments
6. New Business
  - a. Living wage enforcement in the City and County – Marcela Diaz
  - b. Update from the Police Dept. on UVisas approved and ICE presence in Santa Fe – Juda Montano
7. Old Business
  - a. Follow up on Bullying in Schools information – Alejandra Seluja
  - b. DAPA/DACA update-Marcela Diaz
8. Communications from Staff
9. Communications from Committee
10. Next Meeting and Adjourn

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**IMMIGRATION COMMITTEE  
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JULY 7, 2015**

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Call to Order and Roll Call	The Chair convened the Immigration Committee meeting at 4:45 pm, City Railyard Conference Room. A quorum was called at 5:15 pm.	Page 1
Approval of Agenda	<b><i>Ms. Lopez moved to approve the agenda as presented, second by Ms. Guerrero, motion carried by unanimous voice vote.</i></b>	Page 1
Approval of Minutes	Correction of Name: Xochitl Campos-Biggs  Ms. Rodriguez reminded the committee that based on her retirement dates, Due to scheduling conflicts for several members and staff, the next meeting will be May 12, 2015 – 4:30 pm. <b><i>Ms. Lopez moved to approve the minutes of April 7, 2015 as amended, second by Ms. Guerrero, motion carried by unanimous voice vote.</i></b>  <b><i>Ms. Lopez moved to approve the minutes of May 12, 2015 as presented, second by Mr. Rios, motion carried by unanimous voice vote.</i></b>	Page 1-2
Announcements	Informational	Page 2
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New Business		Page 2-4
a. Living Wage Enforcement in the City and County	<i>Informational</i> <i>Staff to add as an Action Item for next meeting: Living Wage Enforcement in the City and County</i>	
b. Update from the Police Department on UVisas approved and ICE presence in Santa Fe		
Old Business		Page 4-5
a. Follow-up on Bullying in Schools	Informational – Follow up meeting to be held with Mr. Chris Sanchez and sub-committee to meet on July 16, 2015.	
b. Update on DAPA/DACA		
Communications from Staff	Informational	Page 5
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Next Meeting and Adjourn	Meeting was adjourned at 6:10 pm, next meeting is scheduled for August 4, 2015.	Page 5
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**Immigration Committee  
July 7, 2015  
Railyard City Offices, Santa Fe, NM  
4:30 pm to 6:10 pm**

**MINUTES**

- 1. The Immigration Committee was called to order at 4:45 pm by the Chair, Alejandra Seluja. A quorum did not exist and is reflected in roll call. A quorum was established at 5:15 pm.**

Present

Alejandra Seluja, Chair  
Maria Cristina Lopez  
Marcela Diaz  
Javier Rios  
Amparo Guerrero

Not Present

Cecilia Tadfor  
Elizabeth Hemmer  
Cara Esquibel  
Jewel Cabeza de Vaca

Staff Present

Terrie Rodriguez, Director

Others Present

Rayos Burciaga, SOMOS un Pueblo Unido, Centro de Trabajadores  
Sgt. Judah Montano, Santa Fe City Police Department  
Community Participant  
Fran Lucero, Stenographer

- 2. Approval of Agenda**

*Ms. Lopez moved to approve the agenda as presented, second by Ms. Guerrero, motion carried by unanimous voice vote.*

- 3. Approval of Minutes – April 7, 2015 and May 12, 2015**

Correction of Name: Xochitl Campos-Biggs

~~Ms. Rodriguez reminded the committee that based on her retirement dates,~~ Due to scheduling conflicts for several members and staff, the next meeting will be May 12, 2015 – 4:30 pm.

*Ms. Lopez moved to approve the minutes of April 7, 2015 as amended, second by Ms. Guerrero, motion carried by unanimous voice vote.*

*Ms. Lopez moved to approve the minutes of May 12, 2015 as presented, second by Mr. Rios, motion carried by unanimous voice vote.*

#### **4. Announcements**

Ms. Burciaga: On July 18, 2015 – Fund Raiser for the Centro de los Trabajadores. There will be music, food and games. There will be a membership drive and the fee is \$20 which will include their meal for the day. Donations are accepted for the festivities.

#### **5. Community Comments**

Community Member – Came before the Immigration Committee to describe wrongful treatment by the local law enforcement authorities and officers at the County Jail. [I want to expose this case as it happened a couple of weeks ago. I was taken in to custody and arrested by the Sheriff's Department for a bench warrant for not paying fines. I was taken in to custody and taken to the County Booking department by two CO's who were two African American Officers. They were super aggressive towards me from the time they arrested me until the time they left. Prior to taking my finger prints I believe they are supposed to give you different clothing as an inmate. These two officers never took me to the room where you change clothes; I was handcuffed and taken to a cell. One of the officers was about 6'4", 400 lbs. and was very aggressive. He asked me to strip down but never took the handcuffs off. They were pushing me against the wall and I have no idea what their reason was to retaliate. They were very aggressive and still had not taken the hand cuffs off of me to change. When they finally took off the hand cuffs; the CO threw me against the bunk and I hit my head against the bunk, I left a bloody hand print on the wall when I touched my head. The officer left laughing. The officer that injured me never came back. I was covered in blood and at that time they transferred me to see the nurse in the detention center. Before that they took me to the nurse they told me to shower to clean myself. By the time I went to see the nurse she said I needed to be transferred to St. Vincent Hospital. The records are available from St. Vincent's Hospital where they had to put 4 staples in my head and said I had a massive concussion. They transferred me back to the detention center where I remained for 4-days. I was picked up on a Friday and did not see the Judge in Magistrate Court until Monday.]

He was allowed to post bond after a few days, he was arrested on Friday and he was released on Monday. They did not give him any medication other than Tylenol and no follow up from the nurse. On Monday he waited to speak to Major Abeyta to file a complaint on this CO. Major Abeyta said he needed to wait for a report before he could file the complaint. When he read the report it did not make reference to what the CO had done to him they blamed the individual and not the officers. The inmate in the next cell was a witness and had seen everything.

While he was there he saw inmates passing drugs, it is not a safe environment in the County facility. The inmate who witnessed this matter was willing to testify.

Ms. Lopez said that this is a civil rights case and this gentleman needs legal assistance.

Ms. Diaz said that she would find out what are the policies in place with Santa Fe County in arrest. There has to be a clear procedure for individuals to be able to make a complaint.

The Chair told the community person that if he wants to return and provide an update he is welcome to do so.

## **6. New Business**

### **a. Living Wage enforcement in the City and County – Marcela Diaz**

Ms. Rayos Burciaga from SOMOS un Pueblo Unido presented: She addressed the problems that are being reported regarding salary problems for employees within businesses in Santa Fe. There have been approximately 7 complaints from employees who work for businesses in the city. A lot of the employees who are complaining do not have their check stubs to show proof of wages. The business owners could not provide even spreadsheets to show the hours worked for these employees and their rate of pay.

Ms. Diaz noted that it is the responsibility under Federal Law that the employer saves all payment records. Ms. Diaz commented that if we were to go to District Court and the employer could not produce the employment records the Judge would act on behalf of the employee.

Ms. Burciaga said that the State and City want the complaints in English.

Ms. Guerrero stated that we are a bi-lingual state and the individual should be able to provide their testimony or complaint in Spanish.

The Center of Law and Poverty has issued a complaint that all documents should be in both languages.

Ms. Lopez said that the function of the Immigration Committee is to support that documents be bi-lingual.

Ms. Burciaga said that when an individual is asked to clock out and they continue to work off the clock they encounter the problem of not having proof of hours worked. There is no way at that time to prove or claim any overtime hours.

Ms. Burciaga said the City Attorney's office is not accepting any documentation or testimony of witnesses. Ms. Burciaga said that the City of Santa Fe is not reviewing the reports from the employer nor listening to the employee. They are also not reviewing documents that are older than 2 years. Therefore if you had

lost wages for over 2 years you can claim your past lost wages but are almost guaranteed that you will not get anything back for any time over the 2 years.

There were examples of action that the City Administration has taken that showed inequality for individuals who have lost wages.

Ms. Burciaga provided recommendations for the Immigration Committee to consider and requested support. As this item was not listed on the Agenda as a Needs Action item, a vote was not possible. It was recommended by the Chair that it be placed on next month Agenda and presented by Ms. Diaz, Committee Member as an action item.

Ms. Diaz said that the United Workers Center have provided the Mayor a document in which they request support from the Immigration Committee. (Exhibit A)

- b. Update from the Police Department on UVisas approved and ICE presence in Santa Fe, Judah Montano, SFPD

Sgt. Montano reported that Chief Garcia has approved approximately 40 out of 41 applications.

To the best of Chief Garcia's knowledge there is no ICE presence in Santa Fe and the Santa Fe Police Department is not working with them.

## **7. Old Business**

- a. Follow Up on Bullying in Schools Information – Maria Cristina Lopez  
The Chair noted that Ms. Duncan, SFPS Board Member attended the May meeting and recommended that a follow up be done with her to recap how her comments were accepted by SFPS.

Mr. Chris Sanchez also commented at the May meeting and a report from him would be appreciated.

Ms. Guerrero said that she would like to have a meeting to discuss the points mentioned in the report in order for everyone to be consistent on what should be discussed with Santa Fe Public Schools Superintendent. Ms. Rodriguez also noted that there is a future bullying meeting that Mr. Sanchez is working with Santa Fe Community Foundation and he will assure that recommendations that were discussed at Immigration Committee and SFPS be ready when the community foundation takes over the work with the city. Mr. Sanchez will be meeting with Santa Fe Community Foundation on July 15<sup>th</sup>.

The Chair recommended that the sub-committee meet with Mr. Sanchez to gather information and be able to include these comments when the Immigration Committee Chair meets with the SFPS Superintendent.

Recommendations from the Immigration Committee were to have the form from SFPS be translated and that it be language friendly. The other was to not have the procedures end at the Principals desk in the schools.

Ms. Guerrero said that this is a cooperative endeavor and the sub-committee would like to meet with Mr. Sanchez from the City. July 16<sup>th</sup> has been set as the meeting date with Mr. Sanchez.

- b. Update on DAPA/DACA – Marcela Diaz  
Allegra Love is doing renewals for Dreamers, focusing on DACA.

July 10<sup>th</sup> there is a hearing scheduled for DAPA. This item to be listed on next month agenda for continuous updates.

#### **8. Communications from Staff**

Grand Opening of the Boys and Girls Club Zona del Sol on July 11<sup>th</sup> from 10:00 am – 1:00 pm. There will be providers there who you can meet with; they will be available to discuss the services they will be providing.

A resolution has also been approved for a Teen Center. The Zona del Sol property is being considered.

#### **9. Communications from Committee**

Mr. Rios provided a report for informational purposes, Improving Health Insurance Enrollment and Access to Health Care in NM.

Mr. Rios would like to invite Nuestra Salud and Ventanilla to the next meeting. The Chair agreed to this invitation.

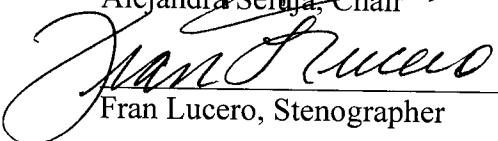
#### **10. Next Meeting and Adjourn**

**August 4, 2015 – 4:30 pm**

**There being no further business to come before the Immigration Committee, the meeting was adjourned at 6:10pm**

Signature Page

  
\_\_\_\_\_  
Alejandra Seluja, Chair

  
\_\_\_\_\_  
Fran Lucero, Stenographer

To: Major Javier Gonzales, Councilor Joseph Maestas  
From: United Workers Center, Somos un Pueblo Unido  
Date: June 11, 2015  
RE: City of Santa Fe Living Wage enforcement

In assisting a number of workers with their City of Santa Fe Living Wage complaints, Somos Un Pueblo Unido has come across some recurring issues regarding the enforcement process. We understand the procedures are still a work in progress, therefore we have come up with some additional recommendations to the City attorney's office that could go a long way in helping workers claim the wages to which they are entitled under the law.

### **I. Payroll Records**

Workers have mentioned to Somos that they are asked by City staff for documentation or other proof of having worked at the business they are filing a complaint against. We wanted to remind the City that under NMSA 50-4-2(B) it is the obligation of the employer to "provide an employee with a written receipt that identifies the employer and sets forth the employee's gross pay, the number of hours worked by the employee, the total wages and benefits earned by the employee and an itemized listing of all deductions withheld from the employee's gross pay." Federal and New Mexico law clearly places the onus on the employer to generate and provide employees with a W-4, a written receipt and other payroll records, as noted above. *See* 8 U.S.C. § 1324a. Oftentimes unscrupulous employers intentionally do not require employees to fill out a W-4 or other payroll documents and pay wages in cash to avoid paying state and federal income taxes. Placing the onus on workers to provide documentation to evidence wages is contrary to the intent of New Mexico's wage law, which serves to protect all workers in the state, regardless of whether an employer fulfills his obligation to provide documentation evidencing payment. We are also troubled that workers submitting Living Wage complaints have been told by frontline City staff that they should not expect to be awarded any back pay if they do not provide some documentation. This is an inaccurate expression of the law and should not be expressed by City staff.

We understand that it would be helpful in the City's investigation if the workers did have documentation proving their employment but their lack of having such documents should not be a bar preventing collection of their rightfully earned wages. Perhaps a solution in such cases, especially where numerous workers are involved, is to hold an administrative hearing or mediation between the parties that could result in a settlement agreement.

### **II. Overtime**

We understand that under the city's Living Wage Ordinance the City has no jurisdiction over the enforcement of overtime hours. However, the City does have the authority to enforce payment of the minimum wage "for all hours worked." *See* Ord. # 2007-43, §28-1.5(A)(4). A worker should still be able to collect her wages for all hours worked,

*Exhibit A*



including those over 40 hours in a workweek even if the overtime rate cannot be enforced by the City. A potential solution to the enforcement of the overtime rate is to create a relationship or establish a memorandum of understanding with U.S. Department of Labor's local office, in order to create a more seamless way for workers to collect their overtime wages. This perhaps could take the form of a joint investigation being undertaken by the City and the local USDOL office of possible violations by unscrupulous employers.

### **III. Three year limit**

The City is only awarded wages going back three years from the time the worker filed his or her complaint. There is no statute of limitations mentioned in the city ordinance and it seems the City is arbitrarily setting this three-year limit. While New Mexico statute does provide a three-year statute of limitations for filing a claim from the last violation, state law also provides a continuing course of conduct provision that allows workers to collect unpaid wages going back to the time of the initial wage violation. Therefore, it is perplexing why the City is only opting for a three-year statute of limitations.

### **IV. Remedies**

Remedies delineated in the City's Living Wage ordinance for aggrieved parties include back pay and reinstatement. *See* Ord. # 2007-43, §28-1.8. Specifically when the City determines a violation has occurred, the City "may issue orders to the employer appropriate to effectuate the complaining person's rights, including *but not limited to* back pay and reinstatement. *See* Ord. # 2007-43, §28-1.8 (A) (emphasis added.) The ordinance goes on to state the City may seek in a court of competent jurisdiction other remedies including "equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief." *See* Ord. # 2007-43, §28-1.8 (C). While this subsection refers to the City taking a complaint to court, it does not prevent the City from ordering other remedies, as allowed by subsection (A). For example, if the City found a violation occurred, it could order back pay to the worker, but the City could also order the violating employer to pay interest on the wages that were not paid when they were originally due. By not awarding interest be paid on illegally withheld wages, employers are in essence taking no-interest loans from their employees' wages. If violating employers are only required to pay back pay owed to their workers, there is little to no deterrence for employers to adhere to the law. Paying interest and a penalty, at minimum, would be more appropriate.

### **V. Retaliation**

At least one worker has reported to Somos that upon filing a Living Wage complaint against his current employer, his hours were almost immediately and significantly cut. This sort of behavior is clearly illegal and goes against the Living Wage ordinance, not to mention state and federal laws. *See* Ord. # 2007-43, §28-1.6. A suggestion to deter this type of behavior is to immediately send a letter to the violating employer and reiterate that this behavior is illegal and refer to the City's Prosecutor's Office to investigate for a possible misdemeanor charge.

## **VI. Language**

A final concern is that all correspondence workers are receiving from the City regarding their complaints is in English. Many of the workers are monolingual Spanish speakers or are not fluent English readers, therefore receiving a letter only in English is likely to create delay in responding to the City with the necessary information. A solution is to provide all correspondence in English and Spanish.