

**SAN JUAN COUNTY
ORDINANCE NO. 102**

**AN ORDINANCE RELATING TO PROMOTION OF ECONOMIC DEVELOPMENT
AND COMMERCE BY REGULATION OF CERTAIN INVOLUNTARY PAYMENTS
REQUIRED OF EMPLOYEES IN SAN JUAN COUNTY**

WHEREAS, it is the intent of this Ordinance to provide that no employee covered by the National Labor Relations Act need join or pay dues to a union, or refrain from joining a union, as a condition of employment; and provide certain penalties for violation of those employment rights; and

WHEREAS, public employees are not covered by the National Labor Relations Act, and therefore are not affected by this Ordinance; and

WHEREAS, certain employers in the construction trades have expressed that "hiring halls" run by the construction trades provide certain benefit to them by facilitating hiring qualified employees and agreements with those employers to hire employees referred through those hiring halls is not prohibited by this Ordinance; and

WHEREAS, San Juan County desires to promote growth and economic development within its legal boundaries, directly and in cooperation with public and private entities promoting San Juan County and its resources, its people, and its many geographical and cultural advantages; and

WHEREAS, San Juan County and its residents compete for the expansion of employment opportunities with other cities, counties, and states whose citizens have adopted similar right-to-work legislation; and

WHEREAS, pursuant to the New Mexico Constitution, this Board is tasked with and empowered to enact ordinances of local self-governance, including for the protection and convenience of the public, to encourage local commerce, and protect the rights and well-being of its citizens; and

WHEREAS, we hereby find and determine that it is in the best interest of the citizens of San Juan County to promote and encourage the growth of products, services, and employment opportunities to its citizens, and for the protection and convenience of the public and the expansion of the tax base, that we should protect employees' right to choose employment without restraint or coercion regarding the payment of mandatory dues, fees, or other payments to a labor organization as a condition of that employment.

NOW, THEREFORE, BE IT ORDAINED BY SAN JUAN COUNTY, NEW MEXICO, THAT NO EMPLOYEE WITHIN ITS UNINCORPORATED BOUNDARIES WHO IS COVERED BY THE NATIONAL LABOR RELATIONS ACT NEED JOIN OR PAY DUES TO A UNION, OR REFRAIN FROM JOINING A UNION, AS A CONDITION OF EMPLOYMENT; AND CERTAIN PENALTIES SHALL BE PROVIDED FOR VIOLATION OF THOSE EMPLOYMENT RIGHTS.

Section 1. Authority. This Ordinance is enacted pursuant to the authority granted to this body by the New Mexico Constitution, as a political subdivision of the State, in accordance with the laws set forth in the New Mexico Revised Statutes and the laws of the United States of America. The San Juan County Board of County Commissioners (the "Commission") is authorized to adopt this Ordinance pursuant to NMSA 1978, §§ 3-2-1 et seq., and NMSA 1978, §§ 4-37-1 et seq. The intent of this Ordinance is to be applied throughout San Juan County and all governmental entities subsumed thereunder included.

Section 2. Declaration of Public Policy. It is hereby declared to be the public policy of San Juan County, in order to ensure individual freedom of choice in the pursuit of employment, for the protection and convenience of its citizens who desire the broadest choices of employment opportunities, to permit its citizens to choose to increase their real take-home pay by decreasing mandatory payroll deductions in order to stimulate savings and economic growth, and to encourage an employment climate conducive to the promotion of the County to locate, expand, or maintain large and small businesses for the economic development, growth, and preservation of the community, including recruiting new businesses to the community, that the right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.

Section 3. Terms. The terms "employee," "employer," "labor organization," and "person" as used in this Ordinance shall have the same meanings as defined by the National Labor Relations Act, 29 U.S.C. §§ 151 et seq.

Section 4. Freedom of Choice Guaranteed, Discrimination Prohibited. No person covered by the National Labor Relations Act shall be required as a condition of employment or continuation of employment:

- A. To resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- B. To become or remain a member of a labor organization;
- C. To pay any dues, fees, assessment, or other charges of any kind or amount to a labor organization; or
- D. To pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro-rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization.

Section 5. Voluntary Deductions Protected. It shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer, unless the employee has expressly waived such right of revocation in the express terms of an otherwise lawful "dues check-off" card. In the event of ambiguity in the meaning of the dues check-off language, the burden of proving notice and assent shall be on the party seeking enforcement of the dues check-off agreement.

Section 6. Agreements in Violation, and Actions to Induce Such Agreements, Declared Illegal. Any agreement, understanding, or practice, written or oral, implied or expressed, between any labor organization and employer that violates the rights of employees as guaranteed by provisions of this Ordinance is hereby declared to be unlawful, null, and void and of no legal effect.

Section 7. Coercion and Intimidation Prohibited. It shall be unlawful for any person, labor organization, or officer, agent, or member thereof, or employer or officer thereof, by any threatened or actual intimidation of an employee or prospective employee, or an employee's or prospective employee's parents, spouse, children, grandchildren, or any other persons residing in the employee's or prospective employee's home, or by any damage or threatened damage to an employee's or prospective employee's property, to compel or attempt to compel such employee to join, affiliate with, or financially support a labor organization, or to refrain from doing so, or otherwise forfeit any rights as guaranteed by provisions of this Ordinance. It shall also be unlawful to cause or attempt to cause an employee to be denied employment or discharged from employment because of support or nonsupport of a labor organization by inducing or attempting to induce any other person to refuse to work with such employees.

Section 8. Penalties. Anyone violating any of the provisions of this Ordinance shall, upon conviction, be subject to a fine not exceeding \$300.00 or imprisonment for a period not exceeding 90 days, or both such fine and imprisonment.

Section 9. Civil Remedies. Any individual harmed as a result of any violation or threatened violation of the provisions of this Ordinance shall have a civil cause of action in the appropriate Court of competent jurisdiction to enjoin further violations and to recover the actual damages sustained, together with the cost of the lawsuit, including a reasonable attorney's fee. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this Ordinance.

Section 10. Duty to Investigate. It shall be the duty of the Sheriff of San Juan County to investigate complaints of violation or threatened violations of this Ordinance and to take all means at his/her command to ensure the effective enforcement of this Ordinance.

Section 11. Prospective Application. The provisions of this Ordinance shall apply to all contracts entered into after the effective date of this Ordinance by employers and labor

organizations for application to employees within our jurisdiction, and shall apply to any renewal or extension of any existing contract.

Section 12. Effective Date. This Ordinance proposed for adoption shall take effect 30 days upon approval by the San Juan County Board of County Commissioners.

Section 13. Severability. If any provision of this Ordinance, or the application thereof to any person, entity, or circumstance, shall be invalid or unenforceable to any extent, the remainder of this Ordinance and the application of such provision to other persons, entities, or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 14. Repeal. All prior orders, resolutions, or ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed.

PASSED, APPROVED, AND ADOPTED this 7th day of August, 2018.

**BOARD OF COUNTY COMMISSIONERS
OF SAN JUAN COUNTY, NEW MEXICO**

By: _____

Margaret McDaniel, Chairman

ATTEST:

Tanya Shelby, County Clerk