

City of Bayard

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CITY OF BAYARD

RESOLUTION 30-2022

DISTRIBUTING CORONAVIRUS STATE & LOCAL AMERICAN RESCUE PLAN RECOVERY FUNDS TO PAY FOR PREMIUM PAY FOR ESSENTIAL WORKERS

WHEREAS, the City of Bayard Mayor and Councilors ("Governing Body") met in a regular meeting on December 12, 2022 at 5:30 PM in the City of Bayard Council Chambers, 800 Central Avenue, Bayard NM 88023; and,

WHEREAS, NMSA 1978, Section 3-18-1 (1972) provides that municipalities have the power to "protect generally the property of its municipality and its inhabitants" and to "preserve peace and order"; and,

WHEREAS, NMSA 1978, Section 3-17-1 et seq. (1990) provides that municipalities may adopt laws not inconsistent with the laws of New Mexico for the purpose of providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants; and,

WHEREAS, the 10th Amendment to the Constitution for the United States is clear when stating, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people []"; and,

WHEREAS, the states and their political subdivisions, the municipalities, have derived specific and reserved powers from the 10th Amendment of the Constitution for the United States, referred to as police powers of the State; and,

WHEREAS, under the 10th Amendment and subsequent state authorization, the municipalities have the duty to pass laws and regulations to protect the safety, health, welfare and morals for the benefit of their communities; and,

WHEREAS, the Governing Body, has a fiduciary responsibility under its statutory police powers to protect the health, safety and welfare of its residents, and the City reserves the right to take whatever actions necessary to do so; and,

WHEREAS, The American Rescue Plan has made available \$350 billion for eligible state, local, territorial and tribal governments to respond to the COVID-19 emergency and bring back jobs; and,

WHEREAS, the Coronavirus State and Local Fiscal Recovery Funds ("Fiscal Recovery Funds") provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery; and,

WHEREAS, Article IV, Section 27; [n]o law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except otherwise provided in this constitution; and,

WHEREAS, the Governing Body affirms that all eligible persons employed by City of Bayard ("City employees"), due to the small size of labor force, regularly engage in a wide variety of job duties, cross training and back-up other City employees, so the end result is all eligible City employees are deemed essential workers; and,

WHEREAS, the Governing Body desires to utilize the Fiscal Recovery Funds to distribute premium pay to all eligible City employees to pay these essential workers for the elevated health risks they face and continue to face during the public health emergency; and,

WHEREAS, all eligible City employees work in person, engaging in daily interactions with the public involving public utilities, maintenance or repair of public works, police and fire protection, and therefore each are deemed critical to protect the health and well-being of residents of the City of Bayard; and,

WHEREAS, the interim Final rule states: "(c) Providing Premium Pay to Eligible Workers. A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low-and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's

residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher; and,

WHEREAS, the Governing Body has approved a fixed budget amount of \$19,000.00 from ARPA funds for premium pay; and,

NOW THEREFORE, be it resolved by the Governing Body of the City of Bayard that the following program rules shall apply:

1. Ineligible Employees – Elected officials are exempt for premium pay. Volunteer Fire Fighters and any City employee hired after December 1, 2022 is exempt from this premium pay distribution.
2. Defining of Essential Worker - That all full-time and part-time City of Bayard employees are defined as essential workers for the purpose of distributing Fiscal Recovery Funds as set forth below.
3. Award of Premium Pay – Subject to availability of Fiscal Recovery Funds in the budgeted amount of \$19,000.00 each full-time employee shall receive a One-Time, Non-Recurring lump sum payment that is based on anticipated direct and indirect exposure to COVID-19, as well as their existing base pay. To be eligible employees must work over 100 hours (full-time employees, non-probationary), over 50 hours (part-time employees and probationary status), from November 5, 2022 through December 2, 2022. No payments distributed pursuant to this resolution shall be for services already provided to a City employee nor shall anything contained herein be construed as giving retroactive effect to the distribution of Fiscal Recovery Funds, as it is the express intent of this resolution to issue premium pay for services to be provided to City of Bayard in the future. There shall be no deduction of employment benefits, from any award of premium pay, but applicable taxes will be withheld.
4. Any employee who is separated from employment prior to his/her completion of the designated hours shall be ineligible for premium pay.
5. Premium Pay Shall be Distributed as Follows on the December 23, 2022 payroll distribution.

Position	Premium Pay	Lump Sum Amount (Maximum)
Full Time / Non-Probationary		\$1,000.00
Part-Time / Non-Probationary		\$500.00

PASSED, APPROVED, AND ADOPTED THIS 12th DAY OF DECEMBER, 2022, by the Governing Body of the City of Bayard, Grant County, New Mexico.

Chon Fierro
Mayor

ATTEST:

Marlena Valenzuela
Deputy Clerk