## CITY of ALBUQUERQUE NINETEENTH COUNCIL

CO	UNCI	L BILL NO	R-10-29	ENACTMENT NO.		
SPONSORED BY: Brad Winter, Dan Lewis						
	1			RESOLUTION		
	2	DIRECTING	THE ADMINIST	RATION TO INVESTIGATE AND TAKE ALL		
	3	NECESSAR	Y AND LEGAL	ACTION, INCLUDING THE FILING OF A		
	4	DECLARAT	ORY JUDGMEN	IT PROCEEDING TO ASCERTAIN THE LEGALITY		
	5	AND ENFOR	RCEABILITY OF	THE PERLMAN MEMORANDUM AND		
	6	ADMINISTR	ATIVE INSTRU	CTION NO. 7-46 AND TO DEVELOP ORDINANCE		
	7	AMENDMEN	NTS THAT PREC	CLUDE ANY PRACTICE THAT PERMITS		
	8	UNCLASSIF	TED EMPLOYE	ES TO BE COMPENSATED FOR WORK NOT		
	9	PERFORME	D ON BEHALF	OF THE CITY OF ALBUQUERQUE.		
	10	WHERE	AS, on Decembe	er 7, 2006 CAO Dr. Bruce J. Perlman issued an		
_ n	11	Interoffice N	/lemorandum to	the City's Chief Operating Officer ("Perlman		
- New Deletion	12	Memorandu	m"). The Perlm	an Memorandum provided in relevant part that if		
음 - -	13	the Chief O	perating Officer	(the "COO" or "Mr. Adams") returned to classified		
rerië Riadi	14	employmen	t with the City:	"your grade will be M-20 or the equivalent and your		
Ma Vate	15	rate of pay v	will be maintain	ed along with raises for the class until retirement";		
Sirect Hand	16	and				
/Underscored Materia trikethrough Material	17	WHERE	AS, rather than	wait until the decision of the COO to return to		
	18	classified se	ervice, Mr. Perlı	nan made the determination of what was an		
	19	"appropriate	e" salary three	years before that decision; and		
ke ke	20	WHERE	AS, the legal jus	tification allegedly supporting the Perlman		
[ <u>Bracketed/Underscored Material]</u> - New [ <del>Bracketed/Strikethrough Materia</del> l] - Deleti	21	Memorandu	ım was an Admi	inistrative Instruction also issued by Dr. Perlman		
	. 22	two months	earlier on Octo	ber 1, 2006; and		
	23	WHERE	AS, this Admini	strative Instruction (Al No. 7-46) provides, in part:		
	24		When an uncla	assified executive management employee is		
	25		entitled to retu	rn to a classified position and elects to do		
	26		co thair comn	ancation chall be adjusted as appropriate:		

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1	and
2	WHEREAS, the Perlman Memorandum further states that the rate of
3	pay provided for the COO is determined to be "appropriate", under the
4	terms of the Administrative Instruction, if the COO returns to classified
5	service with the City; and
6	WHEREAS, it is believed that Mr. Adams rate of pay currently
7	approximates \$147,000; and
8	WHEREAS, on December 21, 2009, in an Interoffice Memorandum
9	("City Attorney Memorandum") to David Campbell, City Attorney Robert
10	White opined that the Perlman Memorandum "does form an enforceable
11	employment contract with the City consistent with the authority granted
12	to the CAO"; and
13	WHEREAS, the City Attorney further opined that the MSO provisions
14	that require a pay plan can be ignored by the CAO and that the CAO is
15	empowered to enter into contracts to provide any salary to any
16	employee; and
17	WHEREAS, the salary range for an M-20 classification starts at about
18	\$34 per hour and goes to about \$56 per hour and should not exceed
19	approximately \$104,000 annually; and
20	WHEREAS, the City Attorney Memorandum purports to be based on
21	three provisions of the City's Merit System Ordinance ("MSO") as well
22	as Al No. 7-46 quoted above; and
23	WHEREAS, it also appears that Mr. Adams was appointed CAO in
24	violation of Section 3-1-6 of the MSO and without benefit of City Council
25	consideration of the contract indicated at Section 3-1-6; and
26	WHEREAS, as reported in the press, the City Attorney has now
27	concluded that contrary to the MSO, the previous administration
28	inappropriately contracted, and, waived or caused to be waived various
29	probationary and other requirements of the MSO regarding select City
30	employees; and
31	WHEREAS, the City Council is specifically empowered under the City
32	Charter to: "Preserve a merit system by ordinance." Art. IV, § 10(e); and

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	1	WHEREAS, the City Council has established a specific process to		
	2	determine the salaries to be paid to classified employees; and		
	3	WHEREAS, the "anti-donation clause" at Article IX, Section 14 of the		
	4	New Mexico Constitution, in part, prohibits the City from making "a gift,		
	5	an allocation or appropriation of something of value, without		
	6	consideration to a person, association or public or private corporation";		
	7	and		
	8	WHEREAS, contracts that are not otherwise provided for in another		
	9	portion of the City Code must comply with the Purchasing Ordinance. In		
	10	part, that ordinance requires that professional services contracts for		
	11	more than \$55,000 require City Council approval. § 5-5-19(A)(3)(c) ROA		
	12	1994. The Perlman Memorandum was not approved by the City Council;		
	13	and		
	14	WHEREAS, there are any number of arguments to dispute the claim that		
	15	the Perlman Memorandum is an enforceable contract; and		
	16	WHEREAS, the administration should be directed to investigate, to		
	17	the fullest extent of the law, the enforceability and legality of the		
o U	18	Perlman Memorandum, Administrative Instruction No. 7-46, the previous		
- Deletion	19	Administration's violation of the MSO, the Purchasing Ordinance and		
_ ' [;	20	possibly the State Constitution.		
laterial]	21	BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF		
Aate	22	ALBUQUERQUE:		
1	23	Section 1. The Administration is directed to investigate and take all		
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	25	proceeding, to ascertain the legality and enforceability of the Perlman		
	26	Memorandum and Administrative Instruction No. 7-46.		
	27	Section 2. The Administration should give due regard to:		
	28	a. The authority of the CAO to issue Al No. 7-46;		
	29	b. Whether the Perlman Memorandum and the Administrative		
	30	Instruction violate the MSO;		
	31	c. Whether the Perlman Memorandum and the Administrative		
	32	Instruction violate the Purchasing Ordinance;		

	1	d. Whether the Perlman Memorandum and the Administrative
	2	Instruction violate the State Constitution;
	3	e. Whether the Perlman Memorandum and the Administrative
	4	Instruction violate the Municipal Code or any other provision of state
	5	law; and
	6	f. Whether the CAO is empowered to negotiate employment contracts,
	7	and, if so, the limits of such authority.
	8	Section 3. The Administration is further directed to develop ordinance
	9	amendments that preclude any practice that permits unclassified
	10	employees to be compensated for work not performed on behalf of the
	11	City.
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