

CITY OF ALBUQUERQUE

TWENTY SIXTH COUNCIL

COUNCIL BILL NO. O-25-72 ENACTMENT NO. _____

SPONSORED BY: Joaquín Baca, by request

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ORDINANCE

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AMENDING ROA 1994, SECTIONS 2-7-8-3, 2-7-8-7, 2-7-8-8, AND 2-7-8-9 OF THE

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INDEPENDENT HEARING OFFICE TO CLARIFY THE PROCEDURE FOR

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APPEALS.

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WHEREAS, the current City Ordinance governing the conduct of the

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Independent Hearing Office includes typographical errors; and

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WHEREAS, amending the ordinance will align with the Independent

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Hearing Office's best practices; and

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WHEREAS, the amendments to this Ordinance provide clarity to the public

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regarding their rights and the obligations of the Independent Hearing Office in

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response to requests for hearing and notices of appeals.

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BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF

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ALBUQUERQUE:

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SECTION 1. Section 2-7-8-3, of the IHO Ordinance is amended as follows:

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§ 2-7-8-3 CITY CLERK; POWERS AND DUTIES.

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(A) The City Clerk shall:

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(1) Adopt and promulgate rules pertaining to administrative hearings;

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(2) Adopt and promulgate a hearing officer code of conduct;

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(3) Oversee the Independent Hearing Office;

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(4) Assign and distribute the work of the Independent Hearing Office

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after considering the knowledge and experience of particular hearing officers,

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efficiency in the hearing process and potential conflicts of interest; and

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(5) Reject appeals where the Independent Hearing Office or a board

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staffed by the Independent Hearing Office lacks jurisdiction over the appeal or

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hearings.

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1 (B) The City Clerk may:

2 (1) Promulgate rules setting fees for filing of appeals or requests for
3 hearings under City ordinances or as otherwise provided by law;

4 (2) Allow the parties to settle matters prior to a hearing on the merits;
5 and

6 (3) Work with City departments, boards, or other governmental entities
7 to conduct hearings on their behalf pursuant to their procedures as provided
8 for by a memorandum of understanding.

9 SECTION 2. Section 2-7-8-7, of the IHO Ordinance is amended as follows:

10 § 2-7-8-7 REQUEST FOR HEARING AND NOTICE OF SETTING.

11 (A) A party seeking a hearing or appeal in accordance with this Ordinance
12 shall file a request for a hearing or a notice of appeal with the City Clerk. The
13 party requesting the hearing or appeal shall provide the City Clerk with their
14 mailing address, telephone number, and, if available, an e-mail address.

15 (B) The request for hearing or notice of appeal shall be written and:

16 (i) identify the parties; identify the action being challenged; state the
17 remedy the person is seeking; and be signed under oath or affirmation
18 attesting to the truth of the information contained therein; and

19 (ii) the document citing the basis for the appeal shall be attached, such
20 as the citation.

21 (C) The request for hearing or notice of appeal shall be filed within 15 days
22 of receipt of the notice advising a person of their right to a hearing or appeal.

23 (D) A request for hearing or notice of appeal is not valid until received by
24 the City Clerk and any filing fee required by the Rules promulgated pursuant
25 to this Ordinance has been paid.

26 (E) Upon receipt of the request for hearing or notice of appeal, the City
27 Clerk shall designate a hearing officer and schedule the time and place for the
28 hearing. The City Clerk shall serve on the parties the notice of hearing and
29 underlying request for hearing or notice of appeal. Service of process of
30 notice shall be set by rules promulgated by the City Clerk.

31 SECTION 3. Section 2-7-8-8, of the IHO Ordinance is amended as follows:

32 § 2-7-8-8 DISQUALIFICATION.

1 (A) Excusal for cause. Hearing officers are required to disclose on the
2 record to the parties any matter that could be considered a conflict of interest
3 with the hearing officer's duty to render fair and impartial decisions. Once
4 such a disclosure has been made, a party to that proceeding may, but are not
5 obligated to, waive such a potential or apparent conflict. If the parties do not
6 waive the potential or apparent conflict, the hearing officer shall recuse
7 himself unless the hearing officer rules that the conflict will not prevent a fair
8 hearing. If the hearing officer recuses himself, the City Clerk shall select an
9 alternate hearing officer and deliver a notice of alternate assignment and
10 resetting to the parties in accordance with ROA 1994, § 2-7-8-7(E).

11 (B) Peremptory excusal. No hearing officer in any proceeding pursuant to
12 this ordinance may be peremptorily excused, except in the case of a personnel
13 hearing or as otherwise permitted by applicable law.

14 (i) Each party may peremptorily excuse one personnel hearing officer
15 within ten days after receiving notice of a personnel hearing by filing a
16 peremptory excusal with the IHO. The party requesting the excusal shall serve
17 notice of the peremptory excusal on all other parties. Upon receiving a
18 peremptory excusal, the IHO shall select an alternate hearing officer, deliver a
19 notice of alternate assignment, reset the personnel hearing, and serve notice
20 to all parties in accordance with ROA 1994, § 2-7-8-7(E). Except for non-
21 substantive communication regarding scheduling or procedure, a party shall
22 not excuse a hearing officer after the personnel hearing has begun or after the
23 personnel hearing officer has performed any discretionary act in the matter.

24 SECTION 4. Section 2-7-8-9, of the IHO Ordinance is amended as follows:
25 § 2-7-8-9 HEARING.

26 (A) Applicability of rules of civil procedure and rules of evidence. In the
27 absence of a specific provision of applicable law governing an action, the
28 hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-
29 001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for
30 guidance. No provision of the rules of civil procedure shall be construed to
31 extend or otherwise modify the authority and jurisdiction of the IHO.

32 (B) Procedural rules. The City Clerk shall promulgate procedural rules for
33 hearings pursuant to this Ordinance.

1 (C) Final decision. The hearing officer shall issue a final written decision
2 within 30 days of the hearing, unless the City Clerk or hearing officer provides
3 additional notice of when a final written decision will be issued. Failure to
4 issue a written decision will not result in a default judgment to either party.

5 (D) Record proper. The record in an administrative hearing shall include, at
6 a minimum:

7 (1) The notices, pleadings, motions and intermediate rulings;

8 (2) The documentary evidence offered and admitted;

9 (3) A final written decision; and

10 (4) The recording or transcript of the hearing.

11 (E) Transcript. Administrative hearings shall be electronically recorded. A
12 party may arrange for a stenographic recording of the hearing at their own
13 expense.

14 (F) Appeals. An appeal may be taken from any final order issued by the
15 hearing officer by filing a petition for a writ of certiorari to the District Court of
16 the Second Judicial District within 30 days.

17 **SECTION 5. SEVERABILITY CLAUSE.** If any section, paragraph, word or
18 phrase of this Ordinance is for any reason held to be invalid, or unenforceable
19 by any court of competent jurisdiction, such decision shall not affect the
20 validity of the remaining provisions of this Ordinance. The Council hereby
21 declares that it would have passed this Ordinance and each section,
22 paragraph, sentence, clause, word or phrase thereof irrespective of any
23 provision being declared unconstitutional or otherwise invalid.

24 **SECTION 6. COMPILATION.** SECTIONS 1, 2, 3, and 4 of this Ordinance shall
25 amend, be incorporated in, and compiled as part of the Revised Ordinances of
26 Albuquerque, New Mexico, 1994.

27 **SECTION 7. EFFECTIVE DATE.** This Ordinance shall take effect five (5) days
28 after publication by title and general summary.