

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-23-96 ENACTMENT NO. _____

SPONSORED BY: Klarissa Peña

1 ORDINANCE
2 ADOPTING A NEW ARTICLE IN CHAPTER 9 OF THE REVISED ORDINANCES OF
3 ALBUQUERQUE 1994 TO BE KNOWN AS THE “ENVIRONMENTAL
4 PROTECTION ALBUQUERQUE – BERNALILLO COUNTY AIR QUALITY
5 CONTROL BOARD ENVIRONMENTAL JUSTICE IN AIR QUALITY PERMITTING
6 ORDINANCE”.

7 WHEREAS, it is the role of the City of Albuquerque to achieve an appropriate
8 balance between environmental protection and economic development, and the
9 risk levels established by this ordinance are selected to strike that balance; and

10 WHEREAS, a strong economy is fostered by protection of human health and
11 the environment, and the basic right of equal protection; and

12 WHEREAS, to protect human health and the environment for the benefit of
13 all populations, municipal decision-makers need accurate information about the
14 impacts of proposed action, including those on the determinants of health and
15 the environment, and how these will be impacted by air quality permit decision
16 making; and

17 WHEREAS, the City Council desires to establish additional permitting
18 requirements for certain new and modified stationary sources of air pollution
19 that are located or proposed to be located, in whole or in part, in a vulnerable
20 or overburdened community in order to minimize and mitigate any
21 disproportionately high and adverse public health impacts or air pollution on
22 the community and ensure meaningful public participation in the permitting
23 process.

24 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY
25 OF ALBUQUERQUE:

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1 SECTION 1. A new Article 25 in Chapter 9 of the Revised Ordinances of
2 Albuquerque 1994 is hereby adopted as follows:

3 “[SECTION 9-25-1 SHORT TITLE.
4 This Ordinance shall be known and cited as the “Environmental Protection
5 Albuquerque – Bernalillo County Air Quality Control Board Environmental
6 Justice in Air Quality Permitting Ordinance.””

7 SECTION 9-25-2. SCOPE.

8 A. Applicability: A person who intends to construct a new stationary source or
9 modify an existing stationary source that is subject to permitting under
10 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC.

- 11 B. Exemptions: Sections 9-25-1 et seq. does not apply to:
- 12 (1) technical permit revisions under 20.11.41.28(B) NMAC;
 - 13 (2) administrative permit revisions under 20.11.41.28(A) NMAC;
 - 14 (3) administrative permit revisions under 20.11.41.28(A) NMAC;
 - 15 (4) relocations for portable sources under 20.11.41(F)(2)(G) NMAC;
 - 16 (5) any source exempt from 20.11.41 NMAC, 20.11.60 NMAC, 20.11.61 NMAC;
 - 17 and
 - 18 (6) sources within Bernalillo county that are located on Indian lands over
19 which the Albuquerque - Bernalillo county air quality control board lacks
20 jurisdiction.

21 SECTION 9-25-3. DEFINITIONS.

22 In addition to the definitions in Section 9-25-3, the definitions in 20.11.1 NMAC,
23 20.11.41 NMAC, 20.11.60 NMAC and 20.11.61 NMAC apply unless there is a
24 conflict between definitions, in which case the definition in Section 9-25-3 shall
25 govern.

- 26 A. “Adverse environmental and public health indicator” is an indicator related
27 to the environment or public health identified in a census tract or block on
28 the map referenced in Section 9-25-5.
- 29 B. “Census block” is an area defined by the Census Bureau that usually has in
30 the range of 600 to 3,000 people living in it.
- 31 C. “Community” means a group of people who are brought together by
32 something in common, such as cultural background, shared experience, and
33 geographic location. One person can belong to many communities.

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- 1 D. “Decennial census” means the count of each resident of the United States,
2 where they live on April 1, made every 10 years ending in zero by the United
3 States Census Bureau.
- 4 E. “Department” means the City of Albuquerque Environmental Health
5 Department.
- 6 F. “EJScreen” means the United States Environmental Protection Agency’s
7 web-based Environmental Justice Screening and Mapping Tool, as updated.
- 8 G. “Environmental justice” means the fair treatment and meaningful
9 involvement of all people regardless of race, color, or national origin, with
10 respect to the development, implementation, and enforcement of
11 environmental laws, regulations, and policies.
- 12 H. “Equity” means that all people have equal access to the same opportunities.
- 13 I. “Fair treatment” means no group of people should bear a disproportionate
14 share of the negative environmental consequences resulting from industrial,
15 governmental, and commercial operations or policies.
- 16 J. “Potential Applicant” means a person who intends to construct a new
17 stationary source or modify an existing stationary source that is subject to
18 permitting under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC that is
19 located or proposed to be located, in whole or in part, in an overburdened
20 community or vulnerable community.
- 21 K. “Public information meeting” means a meeting held by the potential
22 applicant pursuant to Section 9-25-9(E) and during which the potential
23 applicant describes the source the potential applicant proposes to construct
24 or modify, provides a detailed presentation on the potential applicant’s
25 environmental justice assessment report, and takes into consideration
26 public comments.
- 27 L. “Optimum control strategy” means the maximum degree of emissions
28 reduction which can include best management practices, technological
29 advancements, and other innovative emission reduction strategies based on
30 the maximum degree of reduction achievable.
- 31 M. “Overburdened community” means a census tract or block in the City of
32 Albuquerque or Bernalillo County identified on the map published by the
33 Department pursuant to Section 9-25-5 where the public experiences

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1 maximum exposures likely to cause the public to be at higher risk for poor
2 public health outcomes than in a vulnerable community.

3 N. “Tribe” means a state or federally recognized Indian tribe or pueblo located
4 wholly in, partially in, or adjacent to the City of Albuquerque or Bernalillo
5 County.

6 O. “Vulnerable community” means a census tract or block in the City of
7 Albuquerque or Bernalillo County identified on the map published by the
8 Department pursuant to Section 9-25-5 where the public experiences
9 heightened exposures likely to cause the public to be at higher risk for poor
10 public health outcomes.

11 **SECTION 9-25-4. INCLUSIVE COMMUNITY ENGAGEMENT REQUIREMENTS.**

12 A. The purpose of inclusive community engagement is to make it possible for
13 people with different abilities to fully participate, assuring that information is
14 accessible and reaches populations in overburdened communities or
15 vulnerable communities

16 B. Where inclusive community engagement is imposed on the potential
17 applicant, the following shall apply:

18 (1) Send via regular mail or e-mail an invitation to all tribes for formal
19 tribal consultation. A tribe may request an extension of any deadline
20 herein if it needs additional time to be able to sufficiently participate
21 in the process. The Department, upon a determination of good cause,
22 may extend any deadline herein for purposes of allowing a tribe
23 additional time to participate; provided however, any extension of a
24 deadline shall not be for more than thirty (30) calendar days.

25 (2) Information shall be made available in Spanish and Vietnamese, and
26 any other language upon request or as determined by the Department.

27 (3) Information shall be made accessible to those with disabilities.

28 (4) Information shall be made accessible to any other persons upon
29 request or as determined by the Department.

30 (5) All persons shall have the opportunity to engage with meaningful
31 involvement, which means:

32 i. People have an opportunity to participate in decisions about
33 activities that may affect their environment and/or health;

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- 1 ii. The public’s contribution can influence the regulatory agency’s
- 2 decision;
- 3 iii. Community concerns will be considered in the decision-making
- 4 process; and
- 5 iv. Decision makers will seek out and facilitate the involvement of
- 6 those potentially affected.

7 C. A person participating in activities under to Sections 9-25-1 et seq. may
8 request from the Department reasonable assistance to access the process
9 due to a limited ability to speak, write, or understand English, or a disability.
10 Assistance is not reasonable if it fundamentally alters the nature of the
11 program, service, or activity; requires waiver of essential program or
12 licensure requirements; violates accreditation requirements; or poses an
13 undue fiscal or administrative burden on the Department. The Department
14 will take reasonable measures to provide such individuals with access to
15 inclusive community engagement to at no cost to a requesting individual
16 when the request is made to the Department at least seventy-two (72) hours
17 in advance of the public information meeting. The Department will consider
18 requests made within seventy-two (72) hours on a case-by case basis.
19 Potential applicants shall fully cooperate to assist and allow the Department
20 to provide reasonable assistance for access to inclusive community
21 engagement. The Department encourages potential applicants to anticipate
22 requests for reasonable assistance for access to inclusive community
23 engagement and for potential applicants to make proper arrangements in
24 advance of the public information meeting.

25 D. Informal negotiation between the parties and the potential applicant is
26 encouraged as the first option in resolving differences. The potential
27 applicant may consider establishing a good neighbor agreement with the
28 public to resolve differences.

29 E. Nothing herein shall prohibit or limit the Department or potential applicant
30 from conducting additional inclusive community engagement.

31 SECTION 9-25-5. MAPPING OF OVERBRDENEED COMMUNITIES AND
32 VULNERABLE COMMUNITIES BY THE DEPARTMENT.

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- 1 A. Within 180 calendar days of implementation of this Ordinance, the
2 Department shall publish on its website a map of overburdened communities
3 and vulnerable communities. The requirements for potential applicants in
4 Sections 9-25-5 to 11 shall go into effect 180 calendar days after the map is
5 published.
- 6 B. The map shall include adverse environmental and public health indicators
7 for geographic, socioeconomic, demographic, environmental and public
8 health. Adverse environmental and public health indicator shall have a
9 demonstrable nexus with air pollution but shall not be considered standards
10 required to identify quantities and duration of specified air contaminants that
11 constitute air pollution. The Department shall attribute a value to each
12 adverse environmental and public health indicator and may attribute a
13 weight to each adverse environmental and public health indicator. For each
14 adverse environmental and public health indicator, the Department shall
15 provide in a publicly accessible manner the justification, literature, data
16 source(s), methodology, and additional resources supporting inclusion of
17 the adverse environmental and public health indicator on the map.
18 Information regarding the adverse environmental and public health
19 indicators used by the Department shall be based on the latest scientific
20 data. Localized data may be used when it is peer reviewed, and consistent
21 with accepted scientific practices.
- 22 C. Recognized neighborhood associations may submit to the Department a
23 description of the community, including demographics, history,
24 background, public notice avenues, and an assessment of how such
25 information should inform a potential applicant's approach to enhanced
26 public participation for the Department to include as information with the
27 map.
- 28 D. Within two years after the U.S. Census Bureau releases the results of each
29 decennial census, the Department shall publish on its website an updated
30 map of overburdened communities and vulnerable communities, to go into
31 effect 90 calendar days after it is published. The updated map shall include
32 updated census tracts or blocks reflecting the most recent decennial
33 census.

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1 E. Within 30 calendar days of publishing on its website a map or updated map
2 of overburdened communities and vulnerable communities pursuant to
3 Section 9-25-5(A) or (D), the Department shall publish a notice of availability
4 in the newspaper with the largest general circulation in Bernalillo County and
5 provide a copy of the notice by U.S. Certified Mail to all existing sources with
6 a permit under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC.

7 SECTION 9-25-6. PRE-APPLICATION ENVIRONMENTAL JUSTICE
8 COSULTATON WITH THE DEPARTMENT.

9 After the initial map of overburdened communities and vulnerable communities
10 goes into effect, a potential applicant shall contact the Department in writing
11 and request an environmental justice consultation to discuss whether the
12 potential applicant plans to locate the source or may potentially locate the
13 source, in whole or in part, in an overburdened community or vulnerable
14 community and what, if any, additional permitting requirements apply pursuant
15 to Sections 9-25-1 et seq. before submitting an application to the Department.
16 The potential applicant may request the environmental justice consultation be
17 combined with the pre-application meeting required by Section 9-25-6 if a pre-
18 application meeting is held, and the Department may agree. At the time the
19 potential applicant submits a request for an environmental justice consultation,
20 the potential applicant shall also request the initial screening information from
21 the Department pursuant to Section 9-25-7. Upon receipt of a request for an
22 environmental justice consultation, the Department shall schedule the
23 environmental justice consultation to occur within thirty (30) calendar days after
24 the request is received. The potential applicant is required to review the initial
25 screening information provided by the Department and to attend the
26 environmental consultation prior to submitting its application to construct a
27 new stationary source or modify an existing stationary source that is subject to
28 permitting pursuant to 20.11.41 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC. The
29 Department shall not waive the pre-application environmental justice
30 consultation requirement.

31 SECTION 9-25-7. PROVISION OF INITIAL SCREENING INFORMATION BY THE
32 DEPARTMENT.

1 A. Before conducting the environmental justice consultation required by
2 Section 9-25-6 NMAC, a potential applicant shall request from the
3 Department the initial screening information described in Section 9-25-7(B),
4 or gather the screening information from the Department website. The
5 Department shall provide the initial screening information within fifteen (15)
6 calendar days after receiving the request.

7 B. Initial screening information shall include:

8 (1) the list of adverse environmental and public health indicators used in
9 developing the latest map of vulnerable and overburdened
10 communities published by the Department pursuant to Section 9-25-
11 5;

12 (2) all adverse environmental and public health indicator values for the
13 vulnerable or overburdened community in which the source is located
14 or proposed to be located;

15 (3) all adverse environmental and public health indicator values for any
16 contiguous vulnerable or overburdened community located, in whole
17 or in part, within a one-half mile radius around the boundaries of the
18 property the source is located or proposed to be located; and

19 (4) which adverse environmental and public health indicators are present
20 in the overburdened community or vulnerable community in which the
21 source is located or proposed to be located and any contiguous
22 overburdened community or vulnerable community located, in whole
23 or in part, within a one-half mile radius around the boundaries of the
24 property on which the source is located or proposed to be located.

25 C. The screening information will be available on the Department's website.

26 SECTION 9-25-8. ENVIRONMENTAL JUSTICE ASSESSMENT REPORT BY THE
27 POTENTIAL APPLICANT.

28 A. Before proceeding with the enhanced public participation process required
29 by Section 9-25-9, a potential applicant shall conduct an environmental
30 justice assessment and document the findings in an environmental justice
31 assessment report. The purpose of the environmental justice assessment
32 report is for the potential applicant to provide the core information necessary
33 to assess the existing adverse environmental and public health indicators in

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1 a vulnerable or overburdened community; document how the construction
2 of a new stationary source or modification or relocation of an existing
3 stationary source will impact those adverse environmental and public health
4 indicators; any measures the source proposes to address those impacts;
5 document the nature of the community it proposes to locate in; assess the
6 source’s impact on the community; and provide the community with
7 information about the source to facilitate meaningful public outreach. The
8 environmental justice assessment report shall avoid scientific language to
9 the extent possible and, instead, should use plain language that an average
10 person may easily understand. The potential applicant shall not be required
11 to disclosed information protected from disclosure pursuant to the Air
12 Quality Control Act, NMSA 1978, Section 74-2-11.

13 **B. The environmental justice assessment report shall reflect the purposes**
14 **described in Section 9-25-8(A) and include:**

- 15 (1) An executive summary of the information contained in the
16 environmental justice assessment report;
- 17 (2) The initial screening information obtained from the Department
18 pursuant to Section 9-25-7;
- 19 (3) Copies of all available EJScreen reports for a one-half mile radius
20 around the boundaries of the property the source is located or
21 proposed to be located on;
- 22 (4) A description of the source and related facility, if any; the nature of
23 the business; the process or the change for which the permit is
24 being requested, including a preliminary estimate of the maximum
25 quantities of each regulated air contaminant the source will emit if
26 the permit is issued and the proposed construction or modification
27 is completed; and, if the source is being modified, the net change
28 in emissions.;
- 29 (5) A detailed description of the source’s purpose and current and
30 proposed operations, including all equipment and processes to be
31 used and anticipated construction schedule;
- 32 (6) A completed compliance history form;

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- 1 (7) An assessment of the source's impact on all adverse
- 2 environmental and public health indicators;
- 3 (8) All actions and controls the potential applicant proposes to
- 4 implement in order to minimize or mitigate the source's impact on
- 5 adverse environmental and public health indicators in the
- 6 overburdened or vulnerable community;
- 7 (9) A description of the potential applicant's approach to inclusive
- 8 community engagement and to promote enhanced participation;
- 9 (10) A description of the overburdened community or vulnerable
- 10 community in which the source is located or proposed to be
- 11 located, including demographics, history, and background, as
- 12 made aware to the potential applicant,
- 13 (11) The potential applicant's name and address, and the names and
- 14 addresses of the owner or operator of the source or proposed
- 15 source;
- 16 (12) The anticipated date the application will be submitted to the
- 17 Department;
- 18 (13) The exact location of the source or proposed source;
- 19 (14) The anticipated maximum and normal operating schedules
- 20 proposed for the source or facility;
- 21 (15) The current contact information of the potential applicant to which
- 22 comments and inquiries may be directed, including the name of a
- 23 responsible official, phone number, email address, and mailing
- 24 address;
- 25 (16) The potential applicant's website, if available;
- 26 (17) A zoning certification for the proposed location including any
- 27 special use permits or other authorizations; and
- 28 (18) The site plan, if applicable; and
- 29 (19) Proof of financial responsibility and pollution liability insurance.
- 30 C. The environmental justice assessment report may include an optimum
- 31 control strategy analysis demonstrating the emission reduction strategy is
- 32 based on the maximum degree of reduction achievable, and any quality-of-
- 33 life factors agreed upon with the applicable community.

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- 1 **D. The Department may provide resources, data and information to potential**
- 2 **applicants to assist them with preparation of the environmental justice**
- 3 **assessment report.**
- 4 **E. The potential applicant may submit the environmental justice assessment**
- 5 **report to the Department for review and recommendations before**
- 6 **proceeding with the enhanced public participation process required by**
- 7 **Section 9-25-9. The Department’s review shall be limited to determining**
- 8 **whether the environmental assessment report contains all the information**
- 9 **required by Section 9-25-8(A). The Department may identify where**
- 10 **information in the environmental justice assessment report appears lacking**
- 11 **in sufficient detail. Nothing identified by the Department in this optional**
- 12 **review of the environmental justice assessment report shall be deemed**
- 13 **mandatory nor binding and shall not be used as a basis for appeal of a permit**
- 14 **application decision.**

15 **SECTION 9-25-9. ENHANCED PUBLIC PARTICIPATION.**

- 16 **A. Before submitting an application to the Department, a potential applicant**
- 17 **shall comply with the enhanced public participation requirements of Section**
- 18 **9-25-9(B)-(I). Enhanced public participation shall follow the inclusive**
- 19 **community engagement requirements in Section 9-25-4.**
- 20 **B. In addition to complying with any other public notice requirements, the**
- 21 **potential applicant shall provide public notice:**
 - 22 **(1) through publication in the newspaper with the largest general**
 - 23 **circulation in Bernalillo County;**
 - 24 **(2) to the Department, and the Department will publish it on the**
 - 25 **Department’s website until the potential applicant notifies the**
 - 26 **Department enhanced public participation is complete and the**
 - 27 **Department will distribute it to the Department’s listserv for persons**
 - 28 **interested in receiving information about permits;**
 - 29 **(3) on the potential applicant’s website, if available, until enhanced public**
 - 30 **participation is complete;**
 - 31 **(4) by regular mail or e-mail to all owners, as listed in the records of the**
 - 32 **Bernalillo County Assessor, of property located, in whole or in part,**

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1 within a one-half mile radius around the boundaries of the property on
2 which the source is located or proposed to be located; and
3 (5) by regular mail or e-mail to the manager of any federal lands managed
4 by the National Park Service, U.S. Fish and Wildlife Service, or Bureau
5 of Land Management, state parks managed by the New Mexico
6 Environment, Minerals and Natural Resources Department, or city or
7 county parks or open space areas managed by the Bernalillo County
8 Parks and Recreation Department or the City of Albuquerque Parks
9 and Recreation Department located within a one-half mile radius
10 around the boundaries of the property the source is located or
11 proposed to be located on.

- 12 C. The public notice specified in Section 9-25-9(B) shall include the following:
- 13 (1) a brief summary of the environmental justice assessment report
14 prepared in accordance with Section 9-25-8 and instructions for how
15 interested persons may obtain a copy of the full environmental justice
16 assessment report;
 - 17 (2) a statement that a public information meeting will be held if there is
18 significant public interest and inviting submission of public interest
19 for a period of 30 days. Public interest is considered significant if:
 - 20 i. five or more individuals, each of whom are residents of the
21 overburdened community or vulnerable community where the
22 source is located or proposed to be located, request a meeting;
 - 23 ii. a request for a meeting includes a petition signed by five or
24 more individuals, each of whom are residents of the
25 overburdened community or vulnerable community where the
26 source is located or proposed to be located;
 - 27 iii. an elected official, including an elected representative of a
28 Recognized Neighborhood Association or Recognized
29 Coalitions, pursuant to ROA 14-8-2-1, who represents an area in
30 the overburdened community or the vulnerable community
31 where the source is located or proposed to be located requests
32 a meeting;

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- 1 iv. the potential applicant determines public interest is significant;
- 2 or
- 3 v. the Department Director determines public interest is
- 4 significant.
- 5 (3) a statement inviting public comment for a period of 30 calendar days,
- 6 identifying the end date, establishing the end of the comment period
- 7 as the deadline for requesting a public information meeting, and
- 8 providing instructions for requesting a meeting or submitting
- 9 comments to the potential applicant; and
- 10 (4) contact information of the potential applicant for where to submit
- 11 public interest and/or public comment.
- 12 D. In a circumstance where public notice is provided to a Recognized
- 13 Neighborhood Association or Recognized Coalitions is returned as
- 14 undeliverable, the potential applicant shall request contact information and
- 15 re-send the notice to the updated address, if the Department provides one.
- 16 E. After giving notice, the potential applicant shall hold a public information
- 17 meeting if there is significant public interest. The public information meeting
- 18 shall be held in the overburdened community or vulnerable community in
- 19 which the source is located or proposed to be located unless there is no
- 20 suitable meeting space in the overburdened community or vulnerable
- 21 community, in which circumstance the potential applicant may, subject to
- 22 the Department’s approval, hold the meeting in an alternate location within
- 23 as close proximity as possible to the overburdened community or vulnerable
- 24 community, which may include a City-owned property. The meeting shall be
- 25 made available in a live and virtual formats, and in accordance with Section
- 26 9-25-4. The meeting shall be held prior to the end of the public comment
- 27 period on a day and time that is mutually agreeable to those expressing
- 28 significant public interest and the potential applicant. The potential applicant
- 29 shall capture an audio recording or verbatim transcript of the public
- 30 information meeting. The potential applicant shall schedule the meeting for
- 31 a sufficient length of time based on public interest and dedicate enough time
- 32 to allow description, presentation, and discussion regarding Section 9-25-

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1 9(E)(1)-(4) NMAC. At the public information meeting the potential applicant
2 shall:

- 3 (1) describe the source the potential applicant proposes to construct or
4 modify;
- 5 (2) provide a detailed presentation on the potential applicant's
6 environmental justice assessment report;
- 7 (3) accept written and oral public comments, information, and questions;
8 and
- 9 (4) respond to comments and questions with sufficient detail.

10 F. The potential applicant shall make all arrangements and pay all expenses
11 associated with the meeting.

12 G. If a public information meeting is held, the potential applicant shall provide
13 public notice of the meeting at least fifteen (15) calendar days before the
14 meeting. The notice shall be provided in accordance with Section 9-25-4 and
15 Section 9-25-9(B) and shall include:

- 16 (1) the date, start time, end time, and location of the public information
17 meeting;
- 18 (2) the information required by Section 9-25-4 and Section 9-25-9(B); and
- 19 (3) a statement extending the public comment period at least 15 calendar
20 days beyond the date of the public information meeting.

21 H. If the potential applicant holds a public information meeting, the potential
22 applicant shall provide written responses to all persons who submitted
23 written comments, information, or questions during the public comment
24 period or provided written comments, information or questions for the public
25 information meeting, before submitting an application to the Department.

26 I. The potential applicant shall provide the public with more than one method
27 to give public comment.

28 SECTION 9-25-10. ENVIRONMENTAL JUSTICE ASSESSMENT REPORT
29 UPDATE AND ADDENDUM.

30 A. After the close of the public comment period, the potential applicant shall
31 update its environmental justice assessment report to reflect responses and
32 changes based on the enhanced public engagement, including an addendum
33 that shall include:

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- 1 (1) the audio recording or verbatim transcript of the public information
- 2 meeting, if held;
- 3 (2) the written comments, information, and/or questions received during
- 4 the public comment period, or provided for or during the public
- 5 information meeting;
- 6 (3) the potential applicant’s responses to comments, information, and
- 7 questions received as public comments or as part of the public
- 8 information meeting;
- 9 (4) identify any changes the potential applicant made to the
- 10 environmental justice assessment report, including the optimal
- 11 control strategy, if applicable, following the enhanced public
- 12 engagement process to address concerns;
- 13 (5) identify points of agreement with the public;
- 14 (6) identify points of disagreement with the public and state why a
- 15 resolution between the public and potential applicant was not
- 16 reached, if applicable; and
- 17 (7) proposed permit terms and conditions to minimize or mitigate
- 18 identified air quality impacts.
- 19 B. After the close of the public comment period, the potential applicant shall
- 20 update its environmental justice assessment report to include documentary
- 21 proof the potential applicant complied with all public notice requirements in
- 22 Sections 9-25-9(B) and (F) if a public information meeting was held. Such
- 23 proof shall include:
- 24 (1) for public notice published in the newspaper, an affidavit of
- 25 publication with a copy of the notice attached;
- 26 (2) for public notice published on the Department’s website, a screenshot
- 27 of the notice on the Department’s website or a printout of the web page
- 28 the notice is displayed on; and
- 29 (3) for public notice mailed or emailed to nearby property owners as listed
- 30 in the records of the Bernalillo County Assessor or federal, state or
- 31 local public land managers; the date(s) on which notice was mailed or
- 32 emailed; a copy of the notice provided; and a list of those addresses
- 33 and email addresses to which the notice was mailed or emailed.

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1 **SECTION 9-25-11. APPLICATION FOR PERMIT.**

2 A. **In addition to all information required pursuant to 20.11.41 NMAC, 20.11.60**
3 **NMAC or 20.11.61 NMAC, as applicable, the potential applicant shall include**
4 **the following information in the permit application:**

5 (1) **the final environmental justice assessment report and addendum**
6 **required by Section 9-25-10; and**

7 (2) **if an optimum control strategy is included in the environmental**
8 **justice assessment report, the potential applicant shall include the**
9 **optimum control strategy in the permit application.**

10 B. **The application must meet the requirements of Sections 9-25-11(A) and**
11 **(B) in addition to all requirements of 20.11.41 NMAC, 20.11.60 NMAC or**
12 **20.11.61 NMAC, as applicable, for the Department to deem it**
13 **administratively complete.**

14 **SECTION 9-25-12. DEPARTMENT REVIEW AND DECISION.**

15 A. **The Department shall consider the environmental justice assessment report**
16 **submitted with the application when making a final decision regarding the**
17 **permit application.**

18 B. **If the Department issues a permit or permit modification, pursuant to all**
19 **requirements under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC, the**
20 **Department shall issue the permit or permit modification with the permit**
21 **terms and conditions in the application based on the environmental justice**
22 **assessment report, and, if applicable, the optimum control strategy.**

23 **SECTION 9-25-13. APPEAL. Appeals of permitting actions in Sections 9-25-1 et**
24 **seq. shall be made under 20.11.81 NMAC, and shall be based on the permitting**
25 **action and the administrative record for the same, which may include**
26 **information as identified herein.]”**

27 **SECTION 2. NONDISCRIMINATION.**

28 The City Environmental Health Department Air Quality Program shall not
29 discriminate on the basis of race, color, national origin, disability, age, or sex in
30 the administration its programs and activities, pursuant to federal civil rights
31 laws including Title VI of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000d
32 to 2000d-7, and the United States Environmental Protection Agency’s
33 implementing regulations at 40 C.F.R. Parts 5 and Part 7. A person alleging a

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1 permitting action under Sections 9-25-1 et seq. is either intentional
2 discrimination or has discriminatory effects under federal civil rights laws may
3 file a grievance with the City Nondiscrimination Coordinator. The City
4 Nondiscrimination Coordinator shall promptly investigate the grievance using
5 an established grievance procedure. The City Nondiscrimination Coordinator
6 shall be appointed and the grievance procedure shall be established and carried
7 out in accordance with 40 C.F.R. Part 7. Alternatively, a person that believes
8 they have been discriminated against by a permitting action of the Program
9 under Sections 9-25-1 et seq. may file a complaint directly with the United States
10 Environmental Protection Agency. Grievances alleging a permitting action of
11 the Program under Sections 9-25-1 et seq. is either intentional discrimination or
12 has discriminatory effects under federal civil rights laws shall not be actionable
13 claims under 20.11.81 NMAC and the Albuquerque-Bernalillo County Air Quality
14 Control Board shall have no authority to hear, review or decide whether a
15 permitting action is discriminatory, either intentionally or in effect.

16 SECTION 2. SEVERABILITY CLAUSE.

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

24 SECTION 3. COMPILATION.

25 Section 1 of this Ordinance shall amend, be incorporated in, and made part
26 of the Revised Ordinances of Albuquerque, New Mexico, 1994.

27 SECTION 4. EFFECTIVE DATE.

28 This Ordinance shall take effect five days after publication by title and
29 general summary.