

CITY of ALBUQUERQUE

TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-29 ENACTMENT NO. _____

SPONSORED BY: Dan Champine

1 **ORDINANCE**

2 **AMENDING THE LEGAL DEPARTMENT; CITY ATTORNEY ORDINANCE (ROA**
3 **1994, CHAPTER 2, ARTICLE 7, PART 2).**

4 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
5 **ALBUQUERQUE:**

6 **SECTION 1. Chapter 2, Article 7, Part 2 of the Revised Ordinances of**
7 **Albuquerque, 1994 is hereby amended is follows:**

8 **PART 2: LEGAL DEPARTMENT; CITY ATTORNEY**

9 **§ 2-7-2-1 CREATION OF THE LEGAL DEPARTMENT; CITY ATTORNEY.**

10 **There is created a department of the city, the Legal Department. The executive**
11 **and administrative head of the Legal Department shall be the City Attorney.**

12 **§ 2-7-2-2 AUTHORITY AND DUTIES OF THE CITY ATTORNEY.**

13 **The City Attorney, both personally and through his or her assistant city**
14 **attorneys, shall represent the city in the courts. He or she shall also advise the**
15 **Mayor and the Council as to legal matters. The City Attorney and assistant city**
16 **attorneys, while acting in the course and scope of their duties, are prohibited**
17 **from engaging in policy advocacy relating to matters upon which the City**
18 **Legal Department has or is likely to be called upon for advisement or**
19 **representation. Nothing herein shall prohibit the City Attorney or assistant city**
20 **attorneys from expressing their personal views on any issue while acting**
21 **outside the scope of their duties. The City Attorney shall abide by client**
22 **decisions concerning the objectives of representation and shall communicate**
23 **and consult with their client(s) as to the means by which they are to be**
24 **pursued.**

25 **§ 2-7-2-3 APPOINTMENT OF THE CITY ATTORNEY.**

1 The City Attorney shall be appointed by the Mayor with the advice and consent
2 of the Council.

3 § 2-7-2-4 CITY COUNCIL PERFORMANCE REVIEW OF THE CITY
4 ATTORNEY.

5 The City Council shall conduct a performance evaluation of the City Attorney
6 within 90 days following every 18 month period of consecutive service as City
7 Attorney. The 18 month period shall begin after the Council's approval, the
8 City Attorney's appointment or after the prior performance evaluation,
9 whichever is more recent. The Council shall develop written evaluation criteria
10 for this purpose. The City Council shall present its findings in a public written
11 report to the Mayor and Chief Administrative Officer.

12 § 2-7-2-5 CONTRACTING WITH ATTORNEYS TO PROVIDE LEGAL
13 SERVICES.

14 (A) It is the policy of the city to use attorneys who are city employees for
15 litigation unless there are special reasons for using contract attorneys. When
16 the City Attorney weighs whether outside legal counsel should be retained to
17 handle litigation, the City Attorney shall elect to hire or propose such outside
18 counsel only when:

19 (1) There is a conflict of interest within the Legal Department that
20 ethically requires outside counsel to be used;

21 (2) The city has no staff attorney with both the expertise and the time
22 available to handle the needed work; [or]

23 (3) When the city has an insurance policy in which the insurer reserves
24 the right to select defense counsel[.]; or

25 [(4) The City Council has requested outside counsel. In this case, the
26 City Attorney will provide the Council with a list of qualified attorneys to
27 choose from. The Council may also choose its own qualified attorney. The City
28 Attorney shall not terminate representation of any outside counsel
29 representing the City Council without the Council's express consent.]

30 (B) Contract attorneys paid by the city shall report to an overseeing
31 attorney who will evaluate and advise on the appropriateness of the litigation
32 strategy of the contract litigator and will also review and evaluate the billing
33 levels of the contract litigator.

1 (1) The overseeing attorney shall normally be the City Attorney or a
2 city staff attorney assigned by the City Attorney; the overseeing attorney shall
3 not be a person overseeing the legal case preparation for another party who
4 may have separate interests from those of the party represented by the
5 contract attorney.

6 (2) If the estimated cost of securing the services of contract attorneys
7 for a case, to be established at the initiation of the legal work, exceeds
8 \$100,000, the City Attorney shall request the Director of the Office of Internal
9 Audit to retain a different contract attorney to review the work of the contract
10 litigator retained by the city. The contract attorney so retained shall advise and
11 consult with the overseeing attorney concerning his or her conclusions.

12 (3) If the City Attorney believes that he or she may be named
13 personally as a defendant in the suit in question or a related suit, or if he or
14 she believes that the Mayor, the Chief Administrative Officer, or a Deputy or
15 Assistant Chief Administrative Officer may be similarly named in the litigation
16 and they are personally implicated based on the specific facts of the lawsuit,
17 the City Attorney shall request the Director of the Office of Internal Audit to
18 retain a different contract attorney to review the work of the contract litigator
19 retained by the city. The contract attorney so retained shall advise and consult
20 with the overseeing attorney concerning his or her conclusions.

21 (4) If the overseeing attorney believes the contract litigator is not
22 acting in the best interests of the city but when so advised the contract
23 litigator elects not to alter his or her approach, the overseeing attorney shall
24 report this to the person who appointed him or her. Such report by the
25 overseeing attorney shall be at the conclusion of the litigation unless he/she
26 feels the problem is one that must be immediately addressed by the city.
27 Following receipt of such a report, the City Attorney shall share the concern
28 with the Mayor and the President of the City Council; the Director of the Office
29 of Internal Audit, after receipt of such report, shall share the report with the
30 Accountability in Government Oversight Committee. For cases in which the
31 city is the client, members of the City Council and authorized members of the
32 City Council staff shall have unrestricted access to the overseeing attorney

1 and the case record during the course of the legal work and after its
2 conclusion.

3 (5) In cases for which it has been estimated that the cost of securing
4 the services of contract attorneys exceeds \$100,000, the overseeing attorney
5 shall forward for review all legal billings to the Risk Management Division of
6 the Department of Finance and Management. Staff of the Risk Management
7 Division shall work with the overseeing attorney to evaluate the
8 reasonableness of billings and to control contract attorney costs.

9 (6) The above provisions of division (B) do not apply to defense of
10 Workers' Compensation cases; in those cases, the City Risk Manager shall
11 provide oversight of contract litigators' litigation strategy and billing levels.

12 SECTION 2. SEVERABILITY. If any section, paragraph, sentence, clause,
13 word or phrase of this Ordinance is for any reason held to be invalid or
14 unenforceable by any court of competent jurisdiction, such decision shall not
15 affect the validity of the remaining provisions of this Ordinance. The Council
16 hereby declares that it would have passed this Ordinance and each section,
17 paragraph, sentence, clause, word or phrase thereof irrespective of any
18 provision being declared unconstitutional or otherwise invalid.

19 SECTION 3. COMPILATION. SECTION 1 of this Ordinance amends, is
20 incorporated in, and is to be compiled as part of the Revised Ordinances of
21 Albuquerque, New Mexico, 1994.

22 SECTION 4. EFFECTIVE DATE. This Ordinance takes effect five days after
23 publication by title and general summary.
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