

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. R-23-176 ENACTMENT NO. _____

SPONSORED BY: Dan Lewis

1 RESOLUTION
2 ESTABLISHING A MORATORIUM FOR THE ALBUQUERQUE-BERNALILLO
3 COUNTY AIR QUALITY CONTROL BOARD TO ACT UNDER CHAPTER 9,
4 ARTICLE 5, PART 1 ROA 1994, THE JOINT AIR QUALITY CONTROL BOARD
5 ORDINANCE UNTIL FEBRUARY 1, 2024.

6 WHEREAS, in R-2023-044 Council declared that Petition 2022-3 before the
7 Albuquerque-Bernalillo County Air Quality Board (“Board”) could be harmful to
8 the welfare of the City; and

9 WHEREAS, the City Council declares the proposed rules in the record for
10 Petition 2022-3 addresses quality of life impacts absent scientific evidence that
11 there is a nexus to air pollution by identifying the quantities and durations of air
12 contaminants that may, with reasonable probability, cause injury, contrary to
13 New Mexico case law as held in *Southwest Organizing Project v. Albuquerque-*
14 *Bernalillo Cty. Air Quality Control Bd.*, 2021-NMCA-005; and

15 WHEREAS, the City Council declares the proposed rules in the record for
16 Petition 2022-3 purport to impact on industrial development by design and not
17 as a consequence of preventing or abating air pollution, contrary to New Mexico
18 case law as held in *Service Co. of New Mexico v. New Mexico Environmental*
19 *Imp. Bd.*, 89 N.M. 223, 549 P.2d 638 (Ct. App. 1976); and

20 WHEREAS, the City Council is considering making changes to Sections 9-5-
21 1-1 to -99 and needs time to carefully deliberate about further action; and

22 WHEREAS, the intended purpose of the resolution is to advance the health,
23 safety and welfare of the public and to further goals and policies adopted by the
24 Council.

25 BE IT RESOLVED BY THE COUNCIL, GOVERNING BODY OF THE CITY OF
26 ALBUQUERQUE:

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

1 SECTION 1. ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY
2 CONTROL BOARD. The Albuquerque-Bernalillo County Air Quality Board shall
3 have no authority to, and shall not make any regulation or standard to, address
4 quality of life impacts absent scientific evidence that there is a nexus to air
5 pollution by identifying the quantities and durations of air contaminants that
6 may, with reasonable probability, cause injury; or adopt or amend a standard
7 or regulation whereby the impact on industrial development is by design and
8 not a consequence of preventing or abating air pollution until February 1, 2024.

9 SECTION 2. CITY OF ALBUQUERQUE. The City of Albuquerque shall not use
10 its resources to facilitate any action by the Board to make, adopt, or amend any
11 regulation or standard described in Section 1 until February 1.

12 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
13 clause, word, or phrase of this resolution 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 resolution. The Council
16 hereby declares that it would have passed this resolution and each section,
17 paragraph, sentence, clause, word, or phrase thereof irrespective of any
18 provision being declared unconstitutional or otherwise invalid.

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

[Bracketed/Underscored Material] - New
[~~Bracketed/Strikethrough Material~~] - Deletion

1
2