

CITY OF ALBUQUERQUE

TWENTY SIXTH COUNCIL

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

SPONSORED BY: Joaquín Baca, by request

1 **ORDINANCE**

2 **AMENDING ROA 1994, SECTIONS 2-7-8-3, 2-7-8-7, 2-7-8-8, and 2-7-8-9 of the**
3 **Independent Hearing Office to clarify the procedure for appeals.**

4 **WHEREAS, the current City Ordinance governing the conduct of the**
5 **Independent Hearing Office includes typographical errors; and**

6 **WHEREAS, amending the ordinance will align with the Independent**
7 **Hearing Office’s best practices; and**

8 **WHEREAS, the amendments to this ordinance provide clarity to the public**
9 **regarding their rights and the obligations of the Independent Hearing Office in**
10 **response to requests for hearing and notices of appeals.**

11 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
12 **ALBUQUERQUE:**

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

14 **§ 2-7-8-3 CITY CLERK; POWERS AND DUTIES.**

15 **(A) The City Clerk shall:**

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

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

18 **(3) Oversee the ~~[administrative hearings office]~~ [Independent Hearing
19 **Office;]****

20 **(4) Assign and distribute the work of the [Independent Hearing
21 **O][e]ffice after considering the knowledge and experience of particular**
22 **hearing officers, efficiency in the hearing process and potential conflicts of**
23 **interest; [and]****

24 **[(5) Reject appeals where the Independent Hearing Office or a board**
25 **staffed by the Independent Hearing Office lacks jurisdiction over the appeal or**
26 **hearings]**

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1 **[(B) The City Clerk may:]**
2 **[(5)][(1) Promulgate rules] [Set] [setting] fees for filing of appeals or**
3 **requests for hearings under city ordinances or as otherwise provided by law;**
4 **[(6) Reject appeals where the office or a board staffed by the office**
5 **lacks jurisdiction over the appeal or hearings; and]**
6 **[(7)] [(2)] [Refer] [Allow the parties to settle] matters [for mediation] prior**
7 **to [scheduling] a hearing on the merits~~[-]~~; and]**
8 **[(B) The City Clerk may] [(3)] [w][W]ork with city departments~~[,]~~ [and]**
9 **boards~~[,]~~ or other governmental entities to conduct hearings on their behalf**
10 **pursuant to their procedures as provided for by a memorandum of**
11 **understanding.**

12 SECTION 2. Section 2-7-8-7, of the IHO Ordinance is amended as follows:
13 § 2-7-8-7 REQUEST FOR HEARING AND NOTICE OF SETTING.

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

19 (B) The request for hearing or notice of appeal shall be written~~[:]~~ [and:]
20 [(i)] identify the parties; [state the authority for the request or
21 appeal;] identify the action being challenged; state the remedy the person
22 is seeking; and be signed under oath or affirmation attesting to the truth of
23 the information contained therein~~[-]~~; and]
24 [(ii) the document citing the basis for the appeal shall be attached,
25 such as the citation.]

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

29 ~~[(D) The request for hearing or notice of appeal shall be accompanied by~~
30 ~~a filing fee set by the City Clerk pursuant to ROA §§ 2-15-1 to 2-15-5.]~~

31 ~~[(E)]~~ [(D)] A request for hearing or notice of appeal is not valid until
32 received by the City Clerk [and any filing fee required by the Rules]

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1 promulgated pursuant to this Ordinance ~~[have and the filing fee]~~ has been
2 paid ~~[in accordance with ROA 1994, § 2-7-8-8(C)-(D)]~~.

3 ~~[(F)]~~ [(E)] Upon receipt of the request for hearing or notice of appeal, the
4 City Clerk shall designate a hearing officer and schedule the time and place
5 for the hearing. The City Clerk shall serve on the parties the notice of hearing
6 and underlying request for hearing or notice of appeal. Service of process of
7 notice shall be set by rules promulgated by the City Clerk.

8 SECTION 3. Section 2-7-8-8, of the IHO Ordinance is amended as follows:
9 § 2-7-8-8 DISQUALIFICATION.

10 (A) Excusal for cause. Hearing officers are required to disclose on the
11 record to the parties any matter that could be considered a conflict of interest
12 with the hearing officer's duty to render fair and impartial decisions. Once
13 such a disclosure has been made, a party to that proceeding may, but are not
14 obligated to, waive such a potential or apparent conflict. If the parties do not
15 waive the potential or apparent conflict, the hearing officer shall recuse
16 ~~[himself]~~ [themselves] unless the hearing officer rules that the conflict will not
17 prevent a fair hearing. If the hearing officer recuses ~~[himself]~~ [themselves], the
18 City Clerk shall select an alternate hearing officer and deliver a notice of
19 alternate assignment and resetting to the parties in accordance with ROA
20 1994, § 2-7-8-~~[8(E)]~~ [7(E)(F)].

21 (B) Peremptory excusal. [No hearing officer in any proceeding pursuant
22 to this ordinance may be peremptorily excused.] ~~[There shall be no peremptory~~
23 ~~disqualification of a hearing officer in any proceeding pursuant to this~~
24 ~~ordinance]~~ except [in the case of a personnel hearing or] as otherwise
25 [provided] [permitted] ~~[for]~~ by applicable law.

26 [(i)] Each party may peremptorily excuse one personnel hearing
27 officer within ten days [after receiving] ~~[of the receipt of the]~~ notice of [a
28 personnel] hearing~~[-]~~ [by filing a] ~~[The]~~ peremptory excusal ~~[shall be filed]~~
29 with the [City Clerk] [IHO] [and served]. [The party requesting the excusal
30 shall serve notice of the peremptory excusal] on all other parties. Upon
31 ~~[receipt of]~~ [receiving] a peremptory excusal, the [IHO] ~~[City Clerk]~~ shall
32 select an alternate hearing officer~~[,]~~ ~~[and]~~ deliver a notice of alternate
33 assignment~~[,]~~ ~~[and]~~ reset[ting] [the personnel hearing, and serve notice] to

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1 [all] [the] parties in accordance with ROA 1994, § 2-7-8-~~[7(E)(F)]~~~~[8(E)]~~.
2 Except for non- substantive communication [~~involving~~] [~~regarding~~]
3 scheduling or procedure, a party shall not excuse a hearing officer after the
4 [~~personnel~~] hearing has begun or after the [~~personnel~~] hearing officer has
5 performed any discretionary act in the matter.

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

8 (A) Applicability of rules of civil procedure and rules of evidence. In the
9 absence of a specific provision of applicable law governing an action, the
10 hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-
11 001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for
12 guidance. No provision of the rules of civil procedure shall be construed to
13 extend or otherwise modify the authority and jurisdiction~~[of the IHO]~~.

14 (B) Procedural rules. The City Clerk shall promulgate procedural rules
15 for hearings pursuant to this Ordinance.~~[These rules should include rules of~~
16 ~~discovery, evidence, and any other rule the City Clerk deems necessary to~~
17 ~~ensure a full, fair, impartial, and expeditious hearing.]~~

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

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

- 24 (1) The notices, pleadings, motions and intermediate rulings;
- 25 (2) The documentary evidence offered and admitted;
- 26 (3) A final written decision; and
- 27 (4) The recording or transcript of the hearing.

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

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

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1 SECTION 5. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase
2 of this Ordinance is for any reason held to be invalid, or unenforceable by any
3 court of competent jurisdiction, such decision shall not affect the validity of the
4 remaining provisions of this ordinance. The Council hereby declares that it
5 would have passed this Ordinance and each section, paragraph, sentence,
6 clause, word or phrase thereof irrespective of any provision being declared
7 unconstitutional or otherwise invalid.

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

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

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CITY OF ALBUQUERQUE

Albuquerque, New Mexico

Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

February 2, 2025

TO: Brook Bassan, President, City Council

FROM: Timothy M. Keller, Mayor



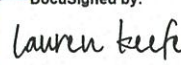
SUBJECT: Amending the Independent Hearing Office Ordinance

The Office of the City Clerk respectfully proposes updates to the IHO Ordinance, which would bring the ordinance into alignment with current practices, provide clarity to the public regarding their rights and obligations related to appeals filed with the IHO, and correct typographical errors in the ordinance.

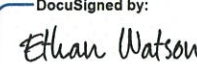
Approved:

Approved as to Legal Form:


Samantha Sengel, EdD Date 2/10/25
Chief Administrative Officer

DocuSigned by:
 2/10/2025 | 2:14 PM MST
1A21D98D92C74EE...
Lauren Keefe Date
City Attorney

Recommended:

DocuSigned by:
 2/10/2025 | 9:49 AM MST
49D7E59AAABD429...
Ethan Watson Date
City Clerk

Cover Analysis

1. What is it?

Amendments to the Independent Hearing Office Ordinance

2. What will this piece of legislation do?

This legislation will align the ordinance with current office practices. It will clarify the requirements and obligations of the public when they request a hearing with the IHO. It will also correct typographical errors in the ordinance.

3. Why is this project needed?

To ensure the IHO is in alignment with the Ordinance and so the public have a clear understanding of their rights and responsibilities when they file appeals with the IHO.

4. How much will it cost and what is the funding source?

There is no cost resulting from this legislation.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

There is no revenue source associated with this legislation.

6. What will happen if the project is not approved?

Typographical errors will remain in the ordinance, as well as outdated practices.

7. Is this service already provided by another entity?

No.

FISCAL IMPACT ANALYSIS

TITLE: Amendments to Independent Hearing Office Ordinance

R: O:
FUND: 110

DEPT: City Clerk

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	Fiscal Years			
	2025	2026	2027	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses				-
Property				-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.
* Range if not easily quantifiable.

Number of Positions created

COMMENTS: No additional funding is needed.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY: Chris Peck

APPROVED:

DocuSigned by:
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FISCAL ANALYST

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CITY ECONOMIST