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1 statutory right to review, grounds for a writ, or basis for equitable relief in the
2 district court regarding intermediate rulings pertaining to the removal of
3 hearing officers.

4 (E) City Council finds that personnel hearings and zoning hearings involve
5 factors not at play in other administrative processes. City Council finds that
6 personnel hearings affect substantive due process rights to the degree that a
7 mechanism for challenging the bias of hearing officers is required for the fair
8 administration of justice. Zoning hearings, which have been recently
9 adjudicated by the Independent Office of Hearings, require a certain expertise
10 and should be under the authority of the Planning Department.

11 Section 3. HEARING OFFICER QUALIFICATIONS

12 A hearing officer shall have a minimum of five years of experience as an
13 attorney, be admitted to practice law in the State of New Mexico, and have an
14 understanding of administrative law.

15 Section 4. SCOPE

16 Hearing officers shall conduct all hearings required by an ordinance,
17 administrative instruction or otherwise to be conducted by "a hearing officer,"
18 "a city hearing officer," "the hearing officer," "the city hearing officer," or "the
19 independent office of hearings." The hearing officers established by this
20 ordinance shall not hear the following: Land use matters, zoning matters,
21 liquor license matters, and hearings held by the Environmental Health
22 Department. The hearing officers established by this Ordinance may hear the
23 matters listed in the previous sentence for convenience or if other hearing
24 officers are unavailable. If a board, commission, or committee with authority to
25 hold an adjudicatory or rulemaking hearing votes, or if a department director
26 with authority to hold an adjudicatory hearing asks, to assign a matter to a
27 hearing officer for a recommendation, the matter will be heard by a hearing
28 officer under this ordinance unless, upon request from the board ,
29 commission, committee or authorized department director, the Mayor appoints
30 another hearing officer on the grounds that a certain expertise is required.

31 Section 5. SELECTION

32 The Mayor shall designate a city hearing officer or officers who shall be
33 unclassified City employees in the Office of the City Clerk. The Mayor may

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1 additionally retain contract hearing officers, subject to the approval of the City
2 Council. Hearing officers who are unclassified City employees shall not
3 engage in outside employment or representation of clients without express
4 approval from the Chief Administrative Officer.

5 **Section 6. DUTIES**

6 (A) Hearing officers are bound by this Code of Ordinances and the New
7 Mexico Rules of Professional Conduct for attorneys.

8 (B) Hearing officers are required to disclose to the parties any matter that
9 could be considered a conflict of interest with their duty to render fair and
10 impartial decisions.

11 (C) Hearing officers shall refrain from engaging in any ex-parte
12 communication with any party or their counsel, except by express agreement
13 of the parties or for non-substantive communication involving scheduling or
14 procedure.

15 **Section 7. REQUEST FOR HEARING AND NOTICE OF SETTING**

16 With regard to the hearings that are to be held under this Ordinance, a
17 written request for a hearing shall be filed with the City Clerk. The party
18 requesting the hearing shall provide the City Clerk with a mailing address and,
19 if available, an e-mail address. A request for hearing is not valid until received
20 by the City Clerk. Upon receipt of the request for hearing, the City Clerk shall
21 designate a hearing officer and schedule the time and place for the hearing.
22 The City Clerk shall mail or hand deliver the notice of hearing to the parties
23 and also shall e-mail a copy of the notice to each party that has provided an e-
24 mail address or whose e-mail address is posted on the City of Albuquerque
25 website. The mailing of the notice to the address provided by the party
26 requesting the hearing constitutes receipt of the notice on the third day after
27 the mailing date. Hand delivery of the notice constitutes receipt of the notice
28 on the date of delivery. Transmission or receipt of an e-mailed copy of the
29 notice shall not change any deadline that applies to a party.

30 **Section 8. DISQUALIFICATION**

31 (A) Personnel hearings affect substantive due process rights to the degree
32 that a mechanism for challenging the bias of hearing officers is required for
33 the fair administration of justice. This section pertains to personnel hearings

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1 only. There shall be no rights to disqualification or excusal in any
2 administrative proceeding except personnel hearings. To the extent of any
3 actual or perceived conflict between this section and any other ordinance, the
4 provisions of this section pertaining to disqualification or excusal in
5 personnel hearings shall control.

6 (B) *General Rules.*

7 (1) If there is a disqualification, excusal or recusal under this Section
8 and an ordinance limits the time for a hearing to commence, the time limit is
9 waived by the requesting party and the City Clerk may toll the running of the
10 time limit for all parties for a reasonable time.

11 (2) Multiple parties with a common interest in the matter constitute a
12 single party for purposes of this section.

13 (3) This ordinance does not create a statutory or interlocutory right
14 of review of a ruling on a motion to excuse a hearing officer.

15 (4) Hearing officers are required to disclose any matter to the parties
16 that could be considered a conflict of interest with their duty to render fair and
17 impartial decisions. Once such a disclosure has been made on the record, the
18 parties to that proceeding may, but are not obligated to, waive such a potential
19 or apparent conflict. If the parties do not waive the potential or apparent
20 conflict, the hearing officer shall recuse himself unless the hearing officer
21 rules that the conflict will not prevent a fair hearing. If the hearing officer
22 recuses himself, the City Clerk shall select an alternate hearing officer and
23 mail or deliver a notice of alternate assignment and resetting to the parties.

24 (C) *Peremptory Excusal.* Each party may peremptorily excuse one hearing
25 officer within ten days of the receipt of the notice for hearing unless the time
26 for hearing under the applicable ordinance is less than ten days in which case
27 each party may peremptorily excuse one hearing officer within two days of
28 receipt of the notice of hearing. Upon receipt of a peremptory excusal, the
29 City Clerk shall select an alternate hearing officer and mail or deliver a notice
30 of alternate assignment and resetting to the parties. Except for non-
31 substantive communication involving scheduling or procedure, a party shall
32 not excuse a hearing officer after the hearing has begun or after the hearing
33 officer has performed any discretionary act in the matter.

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1 **(E) *Disqualification and Excusal for Cause.***

2 (1) The hearing officer may disqualify himself, before a hearing or
3 after a hearing has begun, for any reason by providing written notice of
4 recusal to the City Clerk, who shall appoint an alternate hearing officer and
5 mail or deliver an alternate assignment and notice of resetting.

6 (2) Any party may file a timely and sufficient motion to excuse for
7 cause, supported by affidavit, requesting that the hearing officer recuse
8 himself. The motion shall incorporate an affidavit setting forth the alleged
9 personal bias or prejudice of the hearing officer. An adverse ruling by the
10 hearing officer in the present matter or a prior matter is not of by itself a
11 showing of bias. The hearing officer shall render a decision on the matter
12 within ten days. If the hearing officer recuses himself after receipt of the
13 motion described in this paragraph, the City Clerk shall assign an alternate
14 hearing officer.

15 (3) If, upon receipt of a motion to excuse for cause, the hearing
16 officer denies the motion, the hearing officer shall render, file and serve a
17 decision not to recuse with the City Clerk providing the rationale for denying
18 the motion. A party has ten days from the date of the filing of the decision not
19 to recuse to file a petition for review of the decision with the City Clerk. The
20 Mayor or the Mayor’s designee shall affirm or reverse the decision not to
21 recuse. The Mayor may but is not required to refer the matter to another
22 hearing officer to hold a hearing and make a recommendation to the Mayor
23 regarding whether good cause for recusal has been shown. A hearing officer
24 who recommends reversal of a decision not to recuse shall not be assigned to
25 hear the matter on the merits. If the decision not to recuse is reversed, the
26 City Clerk shall refer the matter to an alternate hearing officer and mail or
27 deliver a notice of alternate assignment and resetting. There shall be no
28 peremptory excusal or motion to recuse an alternate.

29 **Section 9. HEARING.**

30 (A) *Discovery.* There shall be no interrogatories, requests for production
31 of documents, requests for admissions or depositions unless the hearing
32 officer allows these discovery methods under exceptional circumstances. The
33 hearing officer may order the parties to produce witness and exhibit lists in

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1 advance of a hearing. The hearing officer may order the parties to make
2 evidence available for inspection by the opposition prior to the hearing. The
3 parties are encouraged to stipulate to the authenticity of exhibits prior to the
4 hearing.

5 (B) *Telephonic Testimony.* Live testimony is preferred. The hearing officer
6 may allow a witness to testify by telephone. Exhibits may be offered through a
7 telephonic witness as long as the exhibits were provided to the opposition
8 at least two days before the hearing.

9 (C) *Evidence.* Hearing officers may admit any evidence and may give
10 probative effect to evidence that is of a kind commonly relied on by
11 reasonably prudent people in the conduct of serious affairs. The hearing
12 officer may exclude incompetent, irrelevant, immaterial and unduly repetitious
13 evidence. The rules of privilege shall be applicable to the same extent as in
14 proceedings before the courts of this state. Documentary evidence may be
15 received in the form of copies or excerpts. Hearing officers may take notice of
16 judicially cognizable facts and in addition may take notice of general, technical
17 or scientific facts.

18 (D) *Record Proper.* The record in an administrative hearing shall include,
19 at the minimum:

- 20 (1) The notices, pleadings, motions and intermediate rulings;
- 21 (2) The documentary evidence offered and admitted; and
- 22 (3) A written decision.
- 23 (4) The recording or transcript of the hearing.

24 (E) *Transcript.* Administrative Hearings shall be electronically recorded. A
25 party may arrange at their own expense for the hearing to be stenographically
26 recorded.”

27 SECTION 2. REPEAL. The Independent Office of Hearings Ordinance is
28 hereby repealed.

29 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
30 clause, word or phrase of this Ordinance is for any reason held to be invalid or
31 unenforceable by any court of competent jurisdiction, such decision shall not
32 affect the validity of the remaining provisions of this Ordinance. The Council
33 hereby declares that it would have passed this Ordinance and each section,

1 paragraph, sentence, clause, word or phrase thereof irrespective of any
2 provision being declared unconstitutional or otherwise invalid.

3 SECTION 4. COMPILATION. This Ordinance shall be incorporated in and
4 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

5 SECTION 5. EFFECTIVE DATE. This Ordinance shall take effect five days
6 after publication by title and general summary.

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