

**CITY of ALBUQUERQUE
TWENTIETH COUNCIL**

COUNCIL BILL NO. F/S O-12-21 ENACTMENT NO. O. 2012.024

SPONSORED BY: Dan Lewis, by request

1 ORDINANCE

**2 ESTABLISHING INDEPENDENT HEARING OFFICERS, ADOPTING HEARING
3 PROCEDURES AND REPEALING THE INDEPENDENT OFFICE OF HEARINGS
4 ORDINANCE.**

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

**7 SECTION 1. This ordinance repeals and replaces the Independent Office
8 of Hearings Ordinance:**

**9 "Section 1. SHORT TITLE: This ordinance may be cited as the 'IHO
10 Ordinance.'**

11 Section 2. FINDINGS

12 The City Council finds as follows:

**13 (A) The Independent Office of Hearings was established primarily to
14 handle red light camera and speed van violations under the STOP Ordinance,
15 which has been repealed.**

**16 (B) Under State law, hearing officers presiding over STOP Ordinance cases
17 were appointed by the presiding judge of the civil division of the district court.
18 The district court does not normally appoint municipal administrative hearing
19 officers and the Independent Office of Hearings Ordinance, which was enacted
20 primarily to comply with State law, is no longer required in its current form.**

**21 (C) City Council finds that personnel hearings and zoning hearings involve
22 factors not at play in other administrative processes. City Council finds that
23 personnel hearings should have a mechanism for challenging the bias of
24 hearing officers. To the extent of any actual or perceived conflict between the
25 IHO Ordinance and any previously existing ordinance, even if the pre-existing
26 ordinance is arguably more specific on any particular topic or point, it is the**

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1 intent of the City Council that the IHO Ordinance shall prevail. Zoning
2 hearings, which have been recently adjudicated by the Independent Office of
3 Hearings, require a certain expertise and should be under the authority of the
4 Planning Department.

5 **Section 3. HEARING OFFICER QUALIFICATIONS**

6 A hearing officer shall have a minimum of five years of actual working
7 experience as an attorney, be admitted to practice law in the State of New
8 Mexico, and have an understanding of administrative law.

9 **Section 4. SCOPE**

10 (A) The hearing officers established by this ordinance shall conduct all
11 hearings required by an ordinance, administrative instruction or otherwise to
12 be conducted by "a hearing officer," "a city hearing officer," "the hearing
13 officer," "the city hearing officer," or "the independent office of hearings."

14 (B) The hearing officers established by this ordinance shall not hear the
15 following: Land use matters, zoning matters, liquor license matters, and
16 hearings held by the Environmental Health Department unless requested to do
17 so as more fully provided below in sub-section C.

18 (C) The hearing officers established by this Ordinance may hear the
19 matters listed in the previous sub-section, if agreed to by the parties or if other
20 hearing officers are unavailable. If a board, commission, or committee with
21 authority to hold an adjudicatory or rulemaking hearing votes, or if a
22 department director with authority to hold an adjudicatory hearing asks to
23 assign a matter to a hearing officer for a recommendation, the matter will be
24 heard by a hearing officer under this ordinance unless, upon request from the
25 board, commission, committee or authorized department director, the Mayor
26 appoints another hearing officer on the grounds that a certain expertise is
27 required.

28 **Section 5. SELECTION**

29 The Mayor shall designate a city hearing officer or officers who shall be
30 classified City employees in the Office of the City Clerk. The Mayor may
31 additionally retain contract hearing officers, subject to the approval of the City
32 Council. Hearing officers that adjudicate personnel hearings shall be
33 attorneys with a minimum of five years of actual working experience, be

1 admitted to practice law in the State of New Mexico, and have an
2 understanding of administrative law. Hearing officers that adjudicate
3 personnel hearings shall not be City employees and shall be contract hearing
4 officers except that, upon agreement of the parties, a hearing officer who is an
5 employee may hear personnel matters. Hearing officers who are classified
6 City employees shall not engage in outside employment or representation of
7 clients without express approval from the Chief Administrative Officer.

8 Section 6. DUTIES

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

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

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

18 Section 7. REQUEST FOR HEARING AND NOTICE OF SETTING

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

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1 (B) As used herein, "City business day" means those days in which the
2 City's administrative offices are open for general business, typically Monday-
3 Friday except for designated City holidays.

4 (C) If a notice period is ten days or less, notices transmitted after 4 PM on
5 City business days or at any time on non-City business days are deemed
6 transmitted on the next City business day.

7 Section 8. DISQUALIFICATION

8 (A) *Applicability.*

9 There shall be no peremptory disqualification in any administrative
10 proceeding except personnel hearings.

11 (B) *General Rules.*

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

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

23 (C) *Peremptory Excusal.* Each party may peremptorily excuse one
24 personnel hearing officer within ten City business days of the receipt of the
25 notice of hearing. The peremptory excusal shall be filed with the City Clerk
26 and served upon the opposition. Upon receipt of a peremptory excusal, the
27 City Clerk shall select an alternate hearing officer and mail or deliver a notice
28 of alternate assignment and resetting to the parties. Except for non-
29 substantive communication involving scheduling or procedure, a party shall
30 not excuse a hearing officer after the hearing has begun or after the hearing
31 officer has performed any discretionary act in the matter.

32 Section 9. HEARING.

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1 (A) *Discovery*. There shall be no interrogatories, requests for production
2 of documents, requests for admissions or depositions unless allowed by the
3 hearing officer upon a motion for discovery and a finding that the case
4 warrants use of one or all these discovery methods. The hearing officer may
5 order the parties to produce witness and exhibit lists in advance of a hearing.
6 The hearing officer may order the parties to make evidence available for
7 inspection by the opposition prior to the hearing. The parties are encouraged
8 to stipulate to the authenticity of exhibits prior to the hearing.

9 (B) *Telephonic Testimony*. Live testimony is preferred. The hearing officer
10 may allow a witness to testify by telephone. Exhibits may be offered through a
11 telephonic witness as long as the exhibits were provided to the opposition
12 at least two City business days before the hearing.

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

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

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

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

31 SECTION 2. REPEAL. The Independent Office of Hearings Ordinance is
32 hereby repealed.

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

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

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

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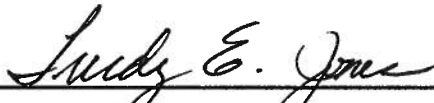
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1 PASSED AND ADOPTED THIS 5th DAY OF September, 2012
2 BY A VOTE OF: 7 FOR 2 AGAINST.

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4 Against: Garduño, O'Malley

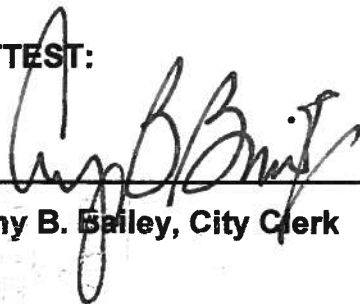
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9 Trudy E. Jones, President
10 City Council

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12 APPROVED THIS 26th DAY OF September, 2012

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15 Bill No. F/S O-12-21

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18 _____
19 Richard J. Berry, Mayor
20 City of Albuquerque

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24 ATTEST:

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26 _____
27 Amy B. Bailey, City Clerk

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