



Legislation Details (With Text)

File #: O-12-21
Type: Ordinance **Status:** Enacted and Published
File created: 5/7/2012 **In control:** City Council
Final action: 9/5/2012
Enactment date: 9/27/2012 **Enactment #:** O-2012-024
Title: F/S Establishing Independent Hearing Officers, Adopting Hearing Procedures And Repealing The Independent Office of Hearings Ordinance (Lewis, by request)
Sponsors: Dan Lewis (By Request)
Indexes:
Code sections:
Attachments: 1. O-21.pdf, 2. O-21cs.pdf, 3. O-21fs.pdf, 4. O-21fsfinal.pdf, 5. FS O-21Enacted.pdf

Date	Ver.	Action By	Action	Result
9/27/2012	4	City Clerk	Published	
9/26/2012	4	Mayor	Signed by the Mayor	
9/11/2012	3	City Council	Sent to Mayor for Signature	
9/5/2012	3	City Council	Do Pass	Pass
8/20/2012	2	City Council	Substituted	Pass
8/20/2012	2	City Council	Postponed as Substituted	Pass
8/6/2012	2	City Council	Postpone	Pass
6/18/2012	2	City Council	Accepted Without Recommendation, As Substituted	
6/11/2012	1	Finance & Government Operations Committee	Substituted	Pass
6/11/2012	1	Finance & Government Operations Committee	Sent to Council Without Recommendation, as substituted	Pass
5/7/2012	1	President	Referred	
5/7/2012	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE
TWENTIETH COUNCIL

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

SPONSORED BY: Dan Lewis, by request

ORDINANCE

F/S Establishing Independent Hearing Officers, Adopting Hearing Procedures And Repealing The Independent Office of Hearings Ordinance (Lewis, by request)
ESTABLISHING INDEPENDENT HEARING OFFICERS, ADOPTING HEARING PROCEDURES AND REPEALING THE INDEPENDENT OFFICE OF HEARINGS ORDINANCE.
BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

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

“Section 1. SHORT TITLE: This ordinance may be cited as the 'IHO Ordinance.'

Section 2. FINDINGS

The City Council finds as follows:

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was established primarily to handle red light camera and speed van violations under the STOP Ordinance, which has been repealed.

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

(C) City Council finds that personnel hearings and zoning hearings involve factors not at play in other administrative processes. City Council finds that personnel hearings should have a mechanism for challenging the bias of hearing officers. To the extent of any actual or perceived conflict between the IHO Ordinance and any previously existing ordinance, even if the pre-existing ordinance is arguably more specific on any particular topic or point, it is the intent of the City Council that the IHO Ordinance shall prevail. Zoning hearings, which have been recently adjudicated by the Independent Office of Hearings, require a certain expertise and should be under the authority of the Planning Department.

Section 3. HEARING OFFICER QUALIFICATIONS

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

Section 4. SCOPE

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

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

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

Section 5. SELECTION

The Mayor shall designate a city hearing officer or officers who shall be classified City employees in the Office of the City Clerk. The Mayor may additionally retain contract hearing officers, subject to the approval of the City Council. Hearing officers that adjudicate personnel hearings shall be attorneys with a minimum of five years of actual working experience, be admitted to practice law in the State of New Mexico, and have an understanding of administrative law. Hearing officers that adjudicate personnel hearings shall not be City employees and shall be contract hearing officers except that, upon agreement of the parties, a hearing officer who is an employee may hear personnel matters. Hearing officers who are classified City employees shall not engage in outside employment or representation of clients without express approval from the Chief Administrative Officer.

Section 6. DUTIES

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

(B) Hearing officers are required to disclose to the parties any matter that could be

considered a conflict of interest with their duty to render fair and impartial decisions.

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

Section 7. REQUEST FOR HEARING AND NOTICE OF SETTING

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

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

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

Section 8. DISQUALIFICATION

(A) *Applicability.*

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

(B) *General Rules.*

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

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

Once such a disclosure has been made on the record, the parties to that proceeding may, but are not obligated to, waive such a potential or apparent conflict. If the parties do not waive the potential or apparent conflict, the hearing officer shall recuse himself unless the hearing officer rules that the conflict will not prevent a fair hearing. If the hearing officer recuses himself, the City Clerk shall select an alternate hearing officer and mail or deliver a notice of alternate assignment and resetting to the parties.

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

Section 9. HEARING.

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

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

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

judicially cognizable facts and in addition may take notice of general, technical or scientific facts.

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

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

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

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

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

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

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

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