



## Legislation Details (With Text)

**File #:** O-19-87  
**Type:** Ordinance  
**Status:** Enacted  
**File created:** 11/18/2019  
**In control:** City Council  
**Final action:** 12/16/2019  
**Enactment date:** 1/22/2020  
**Enactment #:** O-2020-001  
**Title:** Amending Certain Provisions In Section 4-1-1 Et Seq., ROA 1994, The Fiscal Agent Ordinance, To Add The Chief Financial Officer As A Member Of The Investment Committee, And To Update The Types Of Investments Allowed For Cash Balances Not Required For Immediate Disbursement To Ensure This Ordinance Coincides With Recently Enacted Statutory Amendments Pertaining To Investments Of Cash Balances Not Required For Immediate Disbursement (Peña, by request)  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. O-87, 2. O-87Enacted

Date	Ver.	Action By	Action	Result
1/22/2020	2	City Clerk	Published	
1/10/2020	2	Mayor	Signed by the Mayor	
12/31/2019	2	City Council	Sent to Mayor for Signature	
12/16/2019	2	City Council	Accepted with a Recommendation Do Pass (Immediate Action)	
12/16/2019	1	City Council	Passed	Pass
12/9/2019	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass	Pass
12/9/2019	1	Finance & Government Operations Committee	Sent to Council for Immediate Action	Pass
11/18/2019	1	President	Referred	
11/18/2019	1	City Council	Introduced and Referred	

## CITY of ALBUQUERQUE TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-19-87 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Klarissa J. Peña, by request

### ORDINANCE

Amending Certain Provisions In Section 4-1-1 Et Seq., ROA 1994, The Fiscal Agent Ordinance,

To Add The Chief Financial Officer As A Member Of The Investment Committee, And To Update The Types Of Investments Allowed For Cash Balances Not Required For Immediate Disbursement To Ensure This Ordinance Coincides With Recently Enacted Statutory Amendments Pertaining To Investments Of Cash Balances Not Required For Immediate Disbursement (Peña, by request)

AMENDING CERTAIN PROVISIONS IN SECTION 4-1-1 ET SEQ., ROA 1994, THE FISCAL AGENT ORDINANCE, TO ADD THE CHIEF FINANCIAL OFFICER AS A MEMBER OF THE INVESTMENT COMMITTEE, AND TO UPDATE THE TYPES OF INVESTMENTS ALLOWED FOR CASH BALANCES NOT REQUIRED FOR IMMEDIATE DISBURSEMENT TO ENSURE THIS ORDINANCE COINCIDES WITH RECENTLY ENACTED STATUTORY AMENDMENTS PERTAINING TO INVESTMENTS OF CASH BALANCES NOT REQUIRED FOR IMMEDIATE DISBURSEMENT.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE

SECTION 1. Section 4-1-1 et seq., ROA 1994, is amended to read:

"§ 4-1-1 AUTHORITY.

The City Council, pursuant to the provisions of Article X, Section 6 of the Constitution of New Mexico, hereby enacts this article as authorized by such section and for the purpose of providing maximum local self-government.

§ 4-1-2 DEFINITION.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BANKING SERVICE PROVIDER.** Any of a group of banks or non-bank commercial entities, which, independently or in alliance with a Depository Financial Institution, provide intermediary, complementary, or end-to-end financial and informational services, technical consulting or specialized banking products.

**DEPOSITORY FINANCIAL INSTITUTION.** Any of a group that includes commercial banks, savings banks, savings & loan associations and credit unions which conduct business by accepting public deposits which are insured by the federal government against loss and channeling their depositor's monies into lending activities.

**RATING CATEGORY.** A generic securities rating category of any nationally recognized rating agency without regard, in the case of a long-term rating category, to any refinement or

gradation of such long-term rating category by a numerical modifier or otherwise.

#### § 4-1-3 DESIGNATION OF FISCAL AGENT.

Depository Financial Institutions doing business in Bernalillo County and having an unimpaired capital and surplus, or in the case of savings and loan associations, regulatory net worth not including retained earnings and subordinated debt, of at least \$5,000,000 may bid for the agreement to be the "fiscal agent of the City of Albuquerque." The bid and associated agreement shall be in accordance with Chapter 5, Article 5, Public Purchases.

#### § 4-1-4 REQUIRED SERVICES OF FISCAL AGENT.

The Depository Financial Institution so designated shall enter into an agreement with the City, acting through its Mayor, for:

- (A) The collection and deposit credit for the City of all checks and other bills of exchange received by the City and payable to its order or bearer.
- (B) The handling of the City's fiscal depository checking account.
- (C) The handling of transfers of money.
- (D) Providing for the investment of funds not required for immediate disbursement.
- (E) Arranging for the safekeeping of bonds or other securities belonging to, or held by, the City or any official thereof acting in his or her official capacity.
- (F) Other related commercial banking services beneficial to the City which are requested in the bid specifications.

#### § 4-1-5 AGREEMENT WITH FISCAL AGENT.

The agreement shall contain the terms and conditions which are necessary in the opinion of the Mayor for the proper conduct of the fiscal affairs of the City and the safekeeping of the money of the City.

#### § 4-1-6 SECURITY FOR DEPOSITS OF PUBLIC MONEY.

- (A) Deposits of public money with the fiscal agent, other designated depositories and investments in time deposits shall be secured by securities of the United States, its agencies or instrumentalities, or by securities of the State of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions, or by securities, that are guaranteed by the United States or the State of New Mexico. Revenue bonds qualify as security for the deposit of public money only if they are underwritten by a member of the National Association of Securities Dealers, known as "NASD," and are rated in any of the three highest major rating categories defined in § 4-1-10 by any nationally recognized rating agency. No security is required for the

deposit of public money that is insured by the Federal Deposit Insurance Corporation. All securities specified herein will be accepted as collateral for public money deposits at their current market values subject to periodic review and valuation at intervals determined by the Investment Committee. Minimum collateral requirements as specified from time to time by Investment Committee action must be maintained at all times.

(B) Any Depository Financial Institution designated as a depository of public money or having time deposits shall deliver securities of the kind specified in this section, or a joint safekeeping receipt thereof to the Mayor or his designated representative in aggregate value equal to at least one-half the amount of public money placed with such institution. The Investment Committee may direct such institution to deliver securities having more than one-half of the aggregate value of such public money. The Mayor or his designated representative is not liable upon his official bond on account of any funds deposited in the fiscal agency account, other designated depositories or in time deposits when the funds are so secured.

#### § 4-1-7 CITY DEPOSITORIES.

The Mayor may also designate, according to his adopted designation procedure, other Depository Financial Institutions doing business as "city depositories" in which money necessary to pay principal, interest, and exchange fees on city notes and bonds may be deposited into trust and paying agent accounts. City depository accounts may also be established in designated financial institutions for the purpose of receiving city utilities payments made at those institutions pending scheduled transfers to the City's Fiscal Agent. Financial Institutions designated by the U.S. Treasury as "minority-owned enterprises" may be designated as city depositories and receive monies for those activities funded exclusively by federal grants-in-aid. No institution shall be so designated unless it has an unimpaired capital and surplus of at least \$500,000.

#### § 4-1-8 OTHER BANKING AND FINANCIAL SERVICES.

The City may from time to time request proposals for other general, technical or specialized commercial banking and related financial services which are beneficial to the City. Any Depository Financial Institution or Bank Service Provider meeting the qualifications of the proposal may bid for the opportunity to provide the services as specified in the proposal. The bid and associated agreement shall be in accordance with Chapter 5, Article 5, Public Purchases.

#### § 4-1-9 INVESTMENT COMMITTEE.

(A) The Chief Administrative Officer of the City shall appoint an Investment Committee of five members, which will include the Chief Financial Officer, the Director of the Department of

Finance and Administrative Services, and the City's Treasury Officer. The remaining two members will be appointed from anywhere within City Government. In addition, a City Council staff person as designated by the Director of Council Services, the City Controller, the City Economist, the Budget Officer, and the Investment Officer shall participate in the Investment Committee meetings as non-voting members. Committee members may designate an alternate person to serve in their absence at specified committee meetings, and as such the alternate may vote the member's proxy on any motions requiring committee approval.

(B) The Investment Committee will be responsible for:

- (1) Establishing, maintaining and amending general policy and procedures for investing city monies.
- (2) Establishing collateral requirements for city deposits.
- (3) Establishing specific parameters and/or limitations on particular types of investments.
- (4) Ensuring proper internal controls are established and maintained to prohibit unauthorized investment activities.

#### § 4-1-10 INVESTMENT OF CASH NOT REQUIRED FOR IMMEDIATE DISBURSEMENT.

The Mayor or his designated representative shall, to the extent practicable, invest cash balances over the amount anticipated to be needed to meet operating requirements in any of the following:

(A) Accounts with financial institutions located in Bernalillo County, provided that the financial institutions, and the collateral securing the investments permitted by this paragraph, satisfy the requirements for the deposit of public money required by § 4-1-6.

(B) Securities that are issued by the United States government or by certain of its agencies or instrumentalities and that are either direct obligations of the United States or are backed by the full faith and credit of the United States government or agencies guaranteed or sponsored by the United States government. Only the following United States sponsored Agencies' securities are permitted for investment:

- i. Federal Home Loan Banks
- ii. Federal Home Loan Mortgage Corporation
- iii. Federal National Mortgage Association
- iv. Federal Farm Credit Banks Funding Corporation
- v. Federal Agricultural Mortgage Corporation

All securities in this subsection must have a maturity of ten years or less at time of purchase.

(C) Bonds or securities of the State of New Mexico, a New Mexico county or municipality, or of any New Mexico school district which has a taxable valuation of real property for the last year of at least \$1,000,000 and has not defaulted in the payment of interest or sinking fund obligation or failed to pay any bonds at maturity at any time within five years preceding the date of investment. All securities in this subsection must have a maturity date not exceeding ten years at time of purchase.

(D) Brokered certificates of deposit (CD's) and CD's offered by the Certificate of Deposit Account Registry Services (CDARS).

(E) Mutual funds and exchange-traded funds (ETF) that passively track a broad market, fixed income securities index, provided that the mutual fund or ETF sponsor is registered pursuant to the federal Investment Company Act of 1940 and has total assets under management of least one hundred million dollars (\$100,000,000).

(F) The Local Government Investment Pool offered by the New Mexico State Treasurer and described in Section 6-10-10.1 NMSA 1978.

(G) Shares of pooled investment funds managed by the state investment officer, also known as the New Mexico State Investment Council, as provided in Subsection (G) of Section 6-8-7 NMSA 1978.

(H) Securities issued by the following supranational issuers, that are eligible for purchase and sale within the United States, that are denominated in United States dollars, and that have a maturity date not exceeding five years from the date of purchase:

- i. International Bank for Reconstruction & Development;
- ii. International Finance Corporation;
- iii. Inter-American Development Bank.

(I) Commercial paper issued by United States Corporations which are rated A1/P1 and have a maturity date at purchase not exceeding one hundred eighty days.

(J) Shares of money market mutual funds registered with the United States Securities And Exchange Commission (SEC), that are subject to SEC Rule 2a-7, and that assess no SEC Rule 12b-1 sales charge or sales load, deferred sales charge or sales load, or redemption fee. These shares are limited to government, prime, and tax-exempt money market mutual funds.

(K) Repurchase agreements involving the purchase and sale of securities described in subsection (B) of this section, which collateral or purchased securities are held by the City, or for

the benefit of the City by a party other than the provider of the guaranteed investment contract or repurchase agreement, with a collateralized value of at least 102% of the par value of such repurchase agreement, valued at intervals of no less than daily and which collateral is not subject to any other pledge or security interest.

(L) The "short-term investment fund," also known as the Local Government Investment Pool, described in Section 6-10-10.1 NMSA 1978 or other similar pooled fund maintained by the state for the investment of public funds of local public bodies of the state.

(M) (1) Any other investment permitted at the time of the investment by any statute of the State of New Mexico for municipalities which have not adopted a home rule charter.

(2) In the event of a conflict with the statutes of the State of New Mexico and the provisions of this section, the provisions of this section, having been adopted pursuant to the provisions of Article X, Section 6 of the constitution of the State of New Mexico and the home rule Charter of the City of Albuquerque shall prevail.

#### § 4-1-11 INVESTMENT OF BOND PROCEEDS.

(A) The Mayor or his designated representative shall, as practicable, invest the proceeds of all city bonds and other securities and all money set aside for the payment of, or placed in a reserve fund for, such bonds and other securities until the money is needed for the purposes designated in the ordinance or resolution of the City authorizing the issuance of, or otherwise relating to, such bonds or other securities. Income from these investments shall be applied to the payment of principal of, premium, if any, and interest on the bonds, for the purposes for which the bonds were issued, to fund any debt service or other reserve account relating to the bonds or other securities, to pay rebate, penalty, interest and other obligations of the City relating to the bonds or other securities under the Internal Revenue Code of 1986, as amended, including any regulations applicable under the code, to pay the costs and expenses of issuing and administration of the bonds or other securities or for the other related purposes set forth in any resolution or ordinance of the City relating to the bonds or other securities.

(B) Notwithstanding any other provision of law to the contrary, proceeds of the bonds and other securities of the City and amounts set aside by the City in a sinking fund or otherwise for the payment of city bonds and other securities or in a reserve fund relating thereto may be invested in:

- (1) The securities listed in § 4-1-10.
- (2) Deposits which are fully insured by the Federal Deposit Insurance Corporation or

which are secured by obligations described in divisions (A) and (B) of § 4-1-10.

(3) Any other investment specifically permitted by the ordinance authorizing the issuance of the bonds or other securities or set forth in an indenture, escrow agreement or trust agreement, approved by the Council, relating to the bonds or other securities.

(4) Obligations, the interest on which is excluded from gross income of the recipient for federal income tax purposes and in any other instrument which does not constitute "investment property" under Section 148 of the Internal Revenue Code, as amended from time to time, which is rated in any of its three highest major rating categories by any nationally recognized rating agency.

(C) The terms of this section shall not be applicable to industrial revenue or other conduit bonds or other securities which are payable solely from:

(1) Funds other than funds of the City, its departments or agencies;

(2) The revenues of a project financed with the proceeds of industrial revenue or other conduit bonds or other securities; or

(3) A combination of the funds and revenues described in divisions (1) and (2) of this division (C).

#### § 4-1-12 CUSTODY OF SECURITIES.

Securities purchased or held under the provisions of this article shall be in the possession of the Mayor or his designated representative who may deposit with a financial institution or trust company such securities as he shall consider advisable to be held in safekeeping by such agent."

SECTION 2. 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 3. COMPILATION. This ordinance shall be incorporated in and compiled as part of the Revised Ordinances Of Albuquerque, New Mexico, 1994.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.



X:\CL\SHARE\CL-Staff\\_Legislative Staff\Legislation\23 Council\O-87final.docx