



Legislation Text

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CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. RA-19-4 ENACTMENT NO. _____

SPONSORED BY: Cynthia D. Borrego, Ken Sanchez

RULES AMENDMENT

Amending The City Council Rules Of Procedure: Article II, Sections 1 And 2, Dealing With The Timing Of The Election Of The President And Vice President; Article II, Section 3 Relating To Powers And Duties Of The President; Article I Section 8(H), And Article III Section 4(B) To Adjust Cross References; Article III Section 3 Relating To Votes Required For Rule Suspensions; Article III, Section 6(A) Relating To Bill Submission And Voting Requirements; Article III, Section 6(C) Relating To Bill Titles; Article III, Section 8 Relating To Approvals; Article III, Section 11 Relating to Voting by Phone; Article III, Section 21 Relating to Contractors for the Council; And Article III,

Section 24 Prescribing Land Use Hearing Officer Procedures (Borrego, Sanchez)

AMENDING THE CITY COUNCIL RULES OF PROCEDURE: ARTICLE II, SECTIONS 1 AND 2, DEALING WITH THE TIMING OF THE ELECTION OF THE PRESIDENT AND VICE PRESIDENT; ARTICLE II, SECTION 3 RELATING TO POWERS AND DUTIES OF THE PRESIDENT; ARTICLE I SECTION 8(H), AND ARTICLE III SECTION 4(B) TO ADJUST CROSS REFERENCES; ARTICLE III SECTION 3 RELATING TO VOTES REQUIRED FOR RULE SUSPENSIONS; ARTICLE III, SECTION 6(A) RELATING TO BILL SUBMISSION AND VOTING REQUIREMENTS; ARTICLE III, SECTION 6(C) RELATING TO BILL TITLES; ARTICLE III, SECTION 8 RELATING TO APPROVALS; ARTICLE III, SECTION 11 RELATING TO VOTING BY PHONE; ARTICLE III, SECTION 21 RELATING TO CONTRACTORS FOR THE COUNCIL; AND ARTICLE III, SECTION 24 PRESCRIBING LAND USE HEARING OFFICER PROCEDURES.

BE IT APPROVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF

ALBUQUERQUE:

SECTION 1. Article II, Sections 1 and 2 of the City of Albuquerque City Council Rules of Procedure are hereby amended as follows:

“Section 1. Election of President. At the first meeting of the City Council in the month of January of each year, the City Council shall elect one of its members to act as President of the City Council. The President shall serve at the pleasure of the City Council until the first meeting in the month of January of the following year or until his or her successor has been selected. In the event that there shall occur a vacancy in the office of President, except one provided for in Article V Section 5.(c) of the City Charter, an election shall be held at the next regularly scheduled meeting of the City Council to fill the vacancy. Election shall require a majority of all Councilors.

Section 2. Election of Vice-President. At the first meeting of the City Council in the month of January of each year, the City Council shall elect one of its members to act as Vice-President of the City Council. The Vice-President shall serve at the pleasure of the City Council until the first meeting in the month of January of the following year or until his or her successor has been selected. In the event that there shall occur a vacancy in the office of Vice-President, an election shall be held at the next regularly scheduled meeting of the City Council to fill the vacancy. Election shall require a majority of all Councilors.

Section 4. Committees of the Council. Committees of the Council are comprised of members of the City Council Only.

...

E. All Committee assignments shall be subject to the approval of the City Council at the first meeting in the month of January at which the President is elected.

F. Each Councilor shall, insofar as possible, change one Substantive Committee assignment every January when the Committees are constituted.”

SECTION 2. Article II, Section 3 of the City of Albuquerque City Council Rules of Procedure is hereby amended to add subparagraph (B)(15) as follows:

“(15) In the absence of a voluntary sponsor, the President shall be noted as the designated sponsor for any municipal annexation or zone map amendment request (other than appeals) that require final action by the City Council. For this purpose, designation as sponsor does not indicate support or opposition to the item sponsored.”

SECTION 3. Article I, Section 8(H), and Article III, Section 4(B) of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

“H. The first 30 individuals will be allowed to speak under general public comment (Item 10) of the agenda. Individuals who have signed up to provide general public comment to the Council but who, due to this limitation, are not able to speak may either provide general public comment at the end of the meeting under ‘Other Business’ or inform Council staff that they would like to provide their comments at the next regular Council meeting. Individuals who request to speak at the next regular Council meeting will be placed at the front of the public comment sign up list at that meeting.

. . .

B. The City Council shall not allow general public comments (Item 10 above) at Special Meetings.”

SECTION 4. Article III, Section 3 of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

“Section 3. Suspension of Rules. Except for charter, statutory or ordinance provisions, these rules, or any part thereof, may be temporarily suspended by a vote of two-thirds of the Councilors present. The following shall apply if fewer than nine Councilors are present:

Councilors Present	2/3 Vote
8	6
7	5
6	4
5	4

When the suspension of a rule is requested, and no objection is offered, the President shall announce the rule suspended, and the City Council may proceed accordingly.”

SECTION 5. Article III, Section 6(A)(3) and 6(A)(7) of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

“(3) Bills may be introduced by any Councilor at any regular meeting of the City Council, provided that any bill to be submitted for a regular City Council meeting must be presented in both hard copy and electronic copy to the Clerk of the Council prior to 10:00 a.m. on the Tuesday preceding the next regular City Council meeting. Bills may not be introduced at Special Council meetings. The Clerk of the Council shall assign each bill a

number. The Director of Council Services shall prepare a list of introductions to be delivered to the Councilors on the Friday preceding the next regular City Council meeting.

. . .

(7) Unless a more stringent voting standard is otherwise required by law, if a majority of a quorum of the Councilors present at the City Council meeting vote in favor of adopting a bill, it is adopted.”

SECTION 6. Article III, Section 6(C) of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

“~~C.~~ The titles of bills shall be styled as follows:

(1) Titles of bills which require studies for or reports to the City Council shall include the phrase “REQUIRING REPORT.”

(2) Titles of bills which require the appointment of a committee, task force, board, commission or other similar official City panel shall include the phrase “CREATING PANEL.”

(3) Titles of bills which contain one or more City policy directives to be adopted by resolution shall include the phrase “ADOPTING POLICY.”

~~The transmittal memo that accompanies Administration bills which include elements listed above shall emphasize the inclusion of those elements.]”~~

SECTION 7. Article III, Section 8 of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

“Section 8. Approvals.

A. Approvals are defined as that class of City Council action in which the City Council as the Governing Body shall make the final determination upon the recommendation of the Mayor or upon the recommendation of, or appeals from, a duly authorized board or commission of City government. Those items requiring approval of the City Council shall include but not be limited to: appeals authorized under the Integrated Development Ordinance; improvement district matters including protest; appointments to boards and commissions; real property acquisitions and dispositions, and purchases. Approvals other than appeals are termed executive communications or City Council communications.

B. Appeals of Land Use Regulation Decisions.

(1) Appeal procedures and special majorities required shall be as specified in

applicable ordinances. (See the Integrated Development Ordinance, Section 14-16-4-4 6-4 (U) ROA 1994.)

(2) Notice for any full hearing on an appeal shall be given at the City Council meeting at which the City Council votes to reject the recommendation of its Land Use Hearing Officer.

(3) Time allowed for appeal hearings shall be as follows:

(a) The sequence and normal maximum times allowed shall be as follows:

8 minutes for appellant;

10 minutes for party opponent(s) of the appeal;

3 minutes for city staff, unless that staff spoke as opponents;

2 minutes for appellant rebuttal;
discussion among Councilors.

(b) If there are no party opponents of the appellant, the appealed board or commission is allowed up to 8 minutes in the appeal hearing.

(c) The City Council may combine separate appeals of the same action, in which case each appeal will receive an equal share of the appellant's time. The Presiding Councilor shall indicate in advance the division of opponent time if more than one private party is shown by the record to be in opposition.

(d) The Presiding Councilor shall follow the above maximum times unless, based on the complexity of the issues, the Presiding Councilor gives notice of differing times to all parties. In all cases, the maximum time available to proponents and opponents shall be equal, in accordance with the pattern in (a) above.

(e) The parties shall decide on the speakers to use the time assigned to the appellant and the opponents of the appeal.

(4) Evidence:

(a) The City Council will make its decision and findings exclusively on the record of the decision appealed including any supplemental material that was accepted by its Land Use Hearing Officer.

(b) Parties to an appeal and their representatives shall be sworn: "Do you swear (or affirm) that you will tell the truth, the whole truth, and nothing but the truth?" Attorneys may testify on their attorney's oath.

(5) With regard to any appeal that has been filed with and is pending before the City Council:

(a) *Communication with Parties.* No Councilor shall communicate outside a hearing with a party or representative of the party about the appeal, and no party or representative of a party shall communicate outside a hearing with a Councilor about the appeal. Any facts or documents not in the record before the City Council when the appeal is filed are subject to the rules regarding new evidence that are set forth herein;

(b) *Communication with Persons other than Parties.* No Councilor shall knowingly communicate with a member of the public or an organization about the subject of the appeal, and persons or organizations not parties to the appeal shall not communicate with any Councilor about the subject of the appeal and attempt to influence the outcome of the appeal. Information and correspondence that is not in the record at the time the appeal is filed is not evidence and should not be considered in making a decision regarding the outcome of the appeal unless accepted as new evidence.

(c) Any correspondence regarding the subject of an appeal that is an *ex parte* communication and is inadvertently received by a Councilor shall be delivered to the Clerk of the Council and be available for review by the parties. Any correspondence received by Council Services regarding the subject of an appeal shall be held by the Clerk of the Council and not distributed to the Councilors until the City Council has finally decided the appeal and the time for filing an appeal of the City Council decision has run. All such correspondence shall be available for review by the parties upon request.

(d) Notwithstanding the above, staff of the Council Services and other City departments (other than employees of a City department which is the appellant or appellee, or employees who have a personal or pecuniary interest in the outcome of the appeal) may, upon the request of a Councilor, communicate with that Councilor at any time and by any means. Copies of any written materials from City staff shall be distributed to all parties.

(6) A Councilor or City Council Hearing Officer shall withdraw from any proceedings in which he or she has a direct or indirect financial conflict of interest or otherwise cannot accord a fair and impartial hearing.

(7) Votes on appeals shall be as follows:

(a) At a meeting of the City Council, an action to grant or deny an appeal must

be in accordance with Section 14-16-6-4(U)(3)(e) of the Integrated Development Ordinance. A motion to defer, continue, or remand is adopted by a majority of the Councilors present.

C. Executive Communications.

(1) Executive communications may be withdrawn by a memo from the Mayor prior to City Council action with the approval of the City Council. Executive communications may not be amended.

(2) Appointments.

a. Executive Communication appointments shall be sent to the City Council separately for individual consideration. An appointment, which is not referred to Committee, shall be considered at the next regular meeting of the City Council, except appointments to the Environmental Planning Commission, and the Landmarks Commission shall be considered by the Land Use, Planning and Zoning Committee of the City Council.

b. The following City Council actions on Committee reports shall result in the appointment being placed on the agenda for approval at the next regular meeting of the City Council unless it is unanimously recommended by the Committee to whom the appointment has been referred that the appointment be placed on the agenda for approval at the meeting at which the Committee report is considered: acceptance of a recommendation that an appointment "be confirmed" or rejection of a recommendation that an appointment "not be confirmed".

(3) Other Approvals. An approval which is not an appeal or an appointment and which is not referred to committee shall be considered no earlier than the next regular City Council meeting following introduction.

(4) Any approval which is not adopted by the City Council within one year from the date of its conveyance to the City Council shall be deemed "died on expiration," and no further action shall be taken by the Council or its committees on the approval."

SECTION 8. Article III, Section 24 of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

"Section 24. Land Use Hearing Officer Rules of Procedure and Qualifications

1. Notice for any appeal hearing by the Land Use Hearing Officer ("Hearing Officer") shall be given consistent with Section 14-16-6-4(U)(3)(d)(1) of the Integrated Development Ordinance.

2. The sequence and the time allowed for appeal hearings shall be as follows:

25 minutes for appellant;

30 minutes for party opponent(s) of the appeal;

**minutes for city staff, unless that staff spoke as
opponents;**

5 minutes for appellant rebuttal.

3. The Hearing Officer may combine separate appeals of the same action, in which case each appeal will receive an equal share of the appellants' time. The Hearing Officer shall indicate in advance the division of opponent time if more than one private party is shown by the record to be in opposition.

4. The Hearing Officer shall follow the above maximum times unless, based on the complexity of the issues, the Hearing Officer gives notice of differing times to all parties. In all cases, the maximum time available to proponents and opponents shall be equal, in accordance with the pattern above.

5. The parties shall decide on the speakers to use the time assigned to the appellant and the opponents of the appeal.

6. Evidence:

(A) The Hearing Officer shall make his or her decision and findings on the record of the decision appealed supplemented by any evidence allowed to be presented and matters officially noticed.

(B) If the Hearing Officer determines that certain additional evidence proposed is necessary and appropriate for the proper disposition of the matter he or she may take that evidence.

(C) New evidence which could have been put in the record during the previous hearing(s) is not favored for introduction at a Hearing Officer hearing. New evidence which clarifies evidence already in the record may be allowed. New evidence which is offered to contradict evidence in the record may be allowed; if such evidence appears convincing and is on an important point, it can justify the recommendation of a remand. If new evidence is allowed, it shall be restricted to a type and subject deemed admissible by the Hearing Officer.

(D) When a hearing will be expedited and the interest of the parties will not be prejudiced substantially, the Hearing Officer may accept specific items of evidence in

written form; the fact that the author of written evidence is not present for cross examination does not disallow its admission unless the Hearing Officer rules that such absence makes the particular evidence inappropriate.

(E) Witnesses and presenters shall be sworn: "Do you swear (or affirm) that you will tell the truth, the whole truth, and nothing but the truth?" Attorneys may testify on their attorney's oath.

(F) Cross-examination of witnesses is allowed concerning the evidence and opinions they have presented in testimony to the Hearing Officer in order to disclose facts truly and fully. Cross-examination questions may be asked only by parties to the appeal. Any such questions shall be asked immediately following the witnesses' testimony. Questions may be asked by an adverse party or the party's attorney or representative of record. Improper questions will be disallowed by the Hearing Officer and the Hearing Officer may impose reasonable time limits on cross-examination. The Hearing Officer may restate questions to the witness and may require that questions be addressed to the Hearing Officer. The Hearing Officer will rule irrelevant questions and unnecessarily long answers out of order.

7. With regard to any appeal that has been filed with and is pending before the City Council and referred to the Hearing Officer:

(A) Communication with Parties. No City Councilor shall communicate outside a hearing with a party or representative of a party about an appeal, and no party or representative of a party shall communicate outside a hearing with a Councilor about an appeal. Any facts or documents not in the record before the City Council when an appeal is filed are subject to the rules regarding new evidence that are set forth herein.

(B) Communication with Persons other than Parties. No Councilor shall knowingly communicate with a member of the public or an organization about the subject of the appeal, and persons or organizations not parties to the appeal shall not communicate with any Councilor about the subject of the appeal and/or attempt to influence the outcome of the appeal. Information and correspondence that is not in the record at the time the appeal is filed is not evidence and should not be considered in making a decision regarding the outcome of the appeal unless accepted as new evidence.

(C) Communication Between Hearing Officer and Councilor. No Councilor shall knowingly communicate with the Hearing Officer about the subject of a pending

appeal, and the Hearing Officer shall not communicate with any Councilor about the subject of a pending appeal other than by written findings and recommended decision as set forth herein.

(D) **Communication with Parties by Hearing Officer.** The Hearing Officer shall not communicate outside a hearing with a party or representative of a party about an appeal, and no party or representative of a party shall communicate outside a hearing with the Hearing Officer about an appeal. Any facts or documents not in the record before the Hearing Officer when an appeal is filed are subject to the rules regarding new evidence that are set forth herein.

(E) **Communication with Persons other than Parties.** The Hearing Officer shall not knowingly communicate with a member of the public or an organization about the subject of the appeal, and persons or organizations not parties to an appeal shall not communicate with the Hearing Officer about the subject of an appeal and/or attempt to influence the outcome of an appeal. Information and correspondence that is not in the record at the time an appeal is filed is not evidence and should not be considered in making a decision regarding the outcome of an appeal unless accepted as new evidence.

(F) Any correspondence regarding the subject of an appeal that is an ex parte communication and is inadvertently received by the Hearing Officer shall be kept separately from the record on the appeal. The Hearing Officer shall advise the parties to the appeal of the receipt of the ex parte written communication which shall be available for review by the parties.

(G) Notwithstanding the above, staff of the Council Services and other City departments (other than employees of a City department which is the appellant or appellee, or employees who have a personal or pecuniary interest in the outcome of the appeal) may, upon the request of the Hearing Officer, communicate with the Hearing Officer at any time and by any means.

8. The Hearing Officer shall recuse himself or herself from any proceedings in which he or she has a direct or indirect financial conflict of interest or otherwise cannot accord a fair and impartial hearing. In the event that the Hearing Officer has a conflict of interest regarding a particular appeal or a party to that appeal, the Hearing Officer shall immediately notify the Council of the conflict and the appeal shall be scheduled to be heard by the full Council, or may be assigned to a different hearing officer of the City

Council's selection if appropriate.

9. The Hearing Officer shall enter his or her findings and recommended decision ("decision"), and forward the decision and findings to the parties and the Council within 10 days of the close of the hearing.

10. The Hearing Officer shall base his or her decision on a preponderance of the evidence. He or she may reweigh the evidence in the record.

11. The Hearing Officer may decide to recommend that the Council grant or deny an appeal in whole or in part if the Hearing Officer determines that the matter should be remanded, such remand may be ordered consistent with Section 14-16-6-4(U)(3)(d)(6) of the Integrated Development Ordinance.

12. When the Council receives the Hearing Officer's findings and decision, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council through the Clerk of the Council regarding the Hearing Officer's decision and findings provided such comments are in writing and received by the Clerk of the Council and the other parties of record four (4) consecutive days prior to the Council "accept or reject" hearing. Parties submitting comments in this manner must include a signed, written attestation that the comments being submitted were delivered to all parties of record within this time frame, which attestation shall list the individual(s) to whom delivery was made. Comments received by the Clerk of the Council that are not in conformance with the requirements of this Section will not be distributed to Councilors.

13. The Council shall vote whether to accept or reject the Hearing Officer's decision and findings. The Council will make its decision to accept or reject based solely on the record before it, and shall not hear from the parties or any other person, other than its staff, at its hearing on this question. A motion to reject or accept the Hearing Officer's decision and findings must be approved by a majority of the membership of the Council.

14. The Council may accept the decision and amend the findings of the Hearing Officer if such an amendment is consistent with the decision of the Hearing Officer.

15. If the Hearing Officer's decision is rejected, or if the Council fails to either accept or reject the recommendation, the City Council may take any one of the actions identified in Section 14-16-6-4(U)(3)(e)(4) of the Integrated Development Ordinance.

16. If the Hearing Officer rules are in conflict with the Integrated Development Ordinance, the Integrated Development Ordinance shall prevail. If the Hearing Officer rules are silent regarding an area that is addressed by the Integrated Development Ordinance, the Integrated Development Ordinance shall apply.”

SECTION 9. Article III, Section 11 “Voting,” of the City of Albuquerque City Council Rules of Procedure, is hereby amended as follows:

. . .

A Councilor may request to vote by telephone or other similar device when a medical or emergency situation exists, or when official city business or a significant personal event or commitment renders attendance in person unduly burdensome. A request for such voting privileges must be made to the President of the Council who shall determine whether a qualifying situation exists. Such voting can only take place upon the approval of the President of the Council and provided that the Councilor who has been granted such voting privileges can be heard on a speaker to enable the Council and the audience to determine when the Councilor is speaking and casting a vote.

SECTION 10. Article III, Section 21 “Staff,” of the City of Albuquerque City Council Rules of Procedure, is hereby amended as follows to add a new subsection ‘E’:

. . .

E. Contractors. Contractors of the City Council performing services that are analogous to those of Council staff, or in place of those traditionally performed by Council staff, shall be aware of these rules, and shall conform with all relevant provisions that are otherwise applicable to staff. The Director shall direct any Contractors who are performing services for the benefit of the full Council to use best efforts to address the interests and questions of the various Councilors equally to the greatest extent practical.

SECTION 11. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this rules amendment 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 rules amendment. The Council hereby declares that it would have passed this rules amendment and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 12. EFFECTIVE DATE. This rules amendment shall take effect immediately

upon adoption.

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