



Legislation Text

File #: O-23-68, Version: 2

**CITY of ALBUQUERQUE**  
**TWENTY FIFTH COUNCIL**

COUNCIL BILL NO. C/S O-23-68 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Trudy Jones, by request

ORDINANCE

C/S Repealing And Replacing The Independent Hearing Office Ordinance And Providing For A Standardized Process For Administrative Appeals; Repealing Ordinances No Longer In Effect Or Superseded (ROA 1994, 6-1-4, 6-2, 7-6, 7-9, And 7-14); Repealing And Replacing The Contractor Debarment Ordinance (ROA 1994, 5-7); Designating The Zoning Hearing Examiner As The Review Body For Solar Rights Hearings; And Revising The Integrated Development Ordinance Related To Zoning Hearing Examiner Duties (Jones, by request)

WHEREAS, The City Council significantly revised the Independent Hearing Office Ordinance in 2012. At that time, the City Council found 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was established primarily to handle red light camera and speed van violations under the STOP Ordinance, which has been repealed.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.

WHEREAS, The City Council further finds as follows:

- a. The Independent Hearings Office has also conducted a significant number of vehicle forfeiture hearings. The Court of Appeals has held that the City's ordinance allowing for civil vehicle forfeiture is preempted by state law, therefore ordinances governing forfeitures are no longer in effect and shall be removed from the City code.
- b. The City's Water Conservation Landscaping and Water Waste, Water Conservation Large Users Ordinance, and Cross-Connection Prevention and Control Ordinance are no longer in effect since the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) separated from the City, and the City no longer conducts administrative hearings to enforce subject matter of these ordinances.
- c. Further review has revealed that, although the intent of the IHO was to create a unified hearing procedure and process for most administrative hearings, various procedures and processes for appeal continue to exist in City Ordinances and there is a need for further revision of the Independent Hearing Office Ordinance and other ordinances containing administrative hearing processes.

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

SECTION 1. A new subsection is added to "General Provisions," ROA 1994, Chapter 1, Article 1 as follows:

"[§ 1-1-19 HEARING AND APPEAL PROCESS.

All hearings and appeals shall be held in accordance with the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 8, Part 1, unless expressly noted otherwise.]"

SECTION 2. The "Lobbyist and Lobbyist Organization Registration Disclosure Ordinance," ROA 1994, Chapter 2, Article 3, Section 7, is amended as follows:

"§ 2-3-7 COMPLIANCE; ENFORCEMENT; HEARING AND APPEAL PROCESS.

(C) The City Attorney shall seek first to insure voluntary compliance with the provisions of this Ordinance pursuant to § 2-3-5. A person who violates this Ordinance shall be given fifteen

(15) consecutive calendar days notice to correct the matter or request a hearing before [a City] [the Independent] Hearing Officer before fines are imposed. The fifteen day notice shall begin to run on the day the notice is mailed or served in person. The request for hearing shall be submitted to the City Clerk. [The hearing shall use the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 8, Part 1.]

~~[(E) When the lobbyist, lobbyist organization or person who has been given the fifteen days notice has submitted to the City Clerk a written request for a hearing within the fifteen days allowed in § 2-3-7(C) of this Ordinance, a hearing shall be conducted within thirty (30) consecutive calendar days from the day the City Clerk receives the request for hearing. The hearing shall be conducted by a City Hearing Officer at a time and place designated by the Hearing Officer. All witnesses shall be sworn or affirmed and the hearing shall be recorded. The Hearing Officer shall file all findings, conclusions and final orders with the City Clerk and mail a copy to the City Attorney and parties to the hearing at the time of such filing.]~~

~~[(F) An appeal may be taken from any final order issued by the Hearing Officer by filing a Petition for Writ of Certiorari to the District Court of the Second Judicial District within thirty (30) days after the Hearing Officer files the findings, conclusions and final order with the City Clerk. The petition shall be limited to the record of the proceedings before the Hearing Officer. The petitioner shall file a true and correct copy of the record of the proceedings before the Hearing Officer with the District Court within thirty (30) days after filing the Petition for Writ of Certiorari. The Hearing Officer or City Clerk shall charge the petitioner a reasonable fee for the cost of time and materials to reproduce the record. The decision of the hearing officer shall be affirmed unless the decision is found to be arbitrary, capricious or an abuse of discretion unsupported by evidence in the record taken as a whole or otherwise not in accordance with law.]~~

~~[(G) The Hearing Officer shall prepare a written report of his or her findings and decision within ten (10) City working days after the hearing and shall provide copies to the parties and the City Attorney and shall file the findings, conclusions and the final order with the City Clerk.]~~

~~[(H)]~~ [(E)] Any person who files a statement required by this Ordinance, including but not limited to registration and disclosure statements, after the deadline imposed by this Ordinance or any person who files a false or incomplete statement shall be liable for and shall pay the City at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement until the complete report is filed up to a maximum of five hundred dollars (\$500.00). Any person who knowingly and willfully violates any

of the provisions of this Ordinance shall be punished by a fine of up to five hundred dollars (\$500.00) and may have his lobbyist or lobbyist organization registration revoked or his lobbying or lobbying campaigning activities enjoined for up to three (3) years.

SECTION 3. "The IHO Ordinance," ROA 1994, Chapter 2, Article 7, Part 8 is repealed in its entirety and the following is enacted in its place:

"[PART 8: INDEPENDENT OFFICE OF HEARINGS

§ 2-7-8-1 SHORT TITLE.

This part may be cited as the IHO Ordinance.

§ 2-7-8-2 Independent Hearing Office; created

The Independent Hearing Office is created and is a division of the Office of the City Clerk.

§ 2-7-8-3 City Clerk; powers and duties

(A) The City Clerk shall:

(1) adopt and promulgate rules pertaining to administrative hearings;

(2) adopt and promulgate a hearing officer code of conduct;

(3) oversee the administrative hearings office;

(4) assign and distribute the work of the office after considering the knowledge and experience of particular hearing officers, efficiency in the hearing process and potential conflicts of interest;

(5) set fees for filing of appeals or requests for hearings under city ordinances or as otherwise provided by law;

(6) reject appeals where the office or a board staffed by the office lacks jurisdiction over the appeal or hearings; and

(7) refer matters for mediation prior to scheduling a hearing on the merits.

(B) The City Clerk may work with City Departments and Boards or other governmental entities to conduct hearings on their behalf pursuant to their procedures as provided for by a memorandum of understanding.

§ 2-7-8-4 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 understand administrative law.

§ 2-7-8-5 SCOPE.

(A) A hearing officer authorized by this ordinance may conduct hearings required by

any City 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," including hearings related to rule making.

(B) The hearing officers established by this ordinance shall not hear the following matters:

(1) Land use, except for those that are governed by the Integrated Development Ordinance;

(2) Liquor license;

(3) Wood Burning Ordinance, ROA 1994, Sections 9-5-4-1 to 99;

(4) Vehicle Pollution Abatement Ordinance, ROA 1994, Sections 7-12-1 to 5; and

(5) Joint Air Quality Control Board Ordinance, ROA 1994, Sections 9-5-1-1 to 99.

(C) The hearing officers established by this ordinance may hear the matters listed in the previous subsection through consent of all parties or if no other hearing officers are available but shall not hear matters pursuant to the Joint Air Quality Control Board Ordinance, ROA 1994, Sections 9-5-1-1 to 99.

#### § 2-7-8-6 SELECTION.

The mayor may appoint a hearing officer to hear matters under this ordinance as follows:

(A) Any hearing officer appointed prior to the effective date of this ordinance, shall be a classified employee in the Office of Administrative Hearings, and;

(B) Any hearing officer appointed after the effective date of this ordinance, shall be appointed for a term of five (5) years;

(C) In addition to or in the alternative, the Mayor may retain contract hearing officers, subject to the approval of the City Council.

#### § 2-7-8-7 REQUEST FOR HEARING AND NOTICE OF SETTING.

(A) A party seeking a hearing or appeal in accordance with this ordinance shall file a request for a hearing or a notice of appeal with the City Clerk. The party requesting the hearing or appeal shall provide the City Clerk with their mailing address, telephone number, and, if available, an e-mail address.

(B) The request for hearing or notice of appeal shall be written; identify the parties;

state the authority for the request or appeal; identify the action being challenged; state the remedy the person is seeking; and be signed under oath or affirmation attesting to the truth of the information contained therein.

(C) The request for hearing or notice of appeal shall be filed within fifteen days of receipt of the notice advising a person of their right to a hearing or appeal.

(D) The request for hearing or notice of appeal shall be accompanied by a filing fee set by the City Clerk pursuant to ROA § 2-15-1 to 2-15-5.

(E) A request for hearing or notice of appeal is not valid until received by the City Clerk and the filing fee has been paid in accordance with ROA 1994, § 2-7-8-8 (C)-(D).

(F) Upon receipt of the request for hearing or notice of appeal, the City Clerk shall designate a hearing officer and schedule the time and place for the hearing. The City Clerk shall serve on the parties the notice of hearing and underlying request for hearing or notice of appeal. Service of process of notice shall be set by rules promulgated by the City Clerk.

#### § 2-7-8-8 DISQUALIFICATION.

(A) *Excusal for cause.* Hearing officers are required to disclose on the record to the parties any matter that could be considered a conflict of interest with the hearing officer's duty to render fair and impartial decisions. Once such a disclosure has been made, a party 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 deliver a notice of alternate assignment and resetting to the parties in accordance with ROA 1994, § 2-7-8-8(E).

(B) *Peremptory excusal.* There shall be no peremptory disqualification of a hearing officer in any proceeding pursuant to this ordinance except as otherwise provided for by applicable law. Each party may peremptorily excuse one personnel hearing officer within ten days of the receipt of the notice of hearing. The peremptory excusal shall be filed with the City Clerk and served on all other parties. Upon receipt of a peremptory excusal, the City Clerk shall select an alternate hearing officer and deliver a notice of alternate assignment and resetting to the parties in accordance with ROA 1994, § 2-7-8-8(E). 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.

**§ 2-7-8-9 HEARING.**

(A) *Applicability of rules of civil procedure and rules of evidence.* In the absence of a specific provision of applicable law governing an action, the hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for guidance. No provision of the rules of civil procedure shall be construed to extend or otherwise modify the authority and jurisdiction.

(B) *Procedural rules.* The City Clerk shall promulgate procedural rules for hearings pursuant to this ordinance. These rules should include rules of discovery, evidence, and any other rule the City Clerk deems necessary to ensure a full, fair, impartial, and expeditious hearing.

(C) *Final decision.* The hearing officer shall issue a final written decision within 30 days of the hearing, unless the City Clerk or hearing officer provides additional notice of when a final written decision will be issued. Failure to issue a written decision will not result in a default judgment to either party.

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

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

(E) *Transcript.* Administrative Hearings shall be electronically recorded. A party may arrange for a stenographic recording of the hearing at their own expense .

(F) *Appeals.* An appeal may be taken from any final order issued by the hearing officer by filing a petition for a writ of certiorari to the District Court of the Second Judicial District within thirty days.

**§ 2-7-8-10 APPLICABILITY.**

In the event that any of the provisions contained herein conflict with any specific provision of any ordinance or resolution establishing a hearing and appeals process, such specific provision shall control.]”

**SECTION 4. “Civil Emergencies,” ROA 1994, Chapter 2, Article 9, Part 1, Section 14 is**

amended as follows:

**“§ 2-9-1-14 ENFORCEMENT**

(E) Notice of Violation. The City Attorney may issue a Notice of Violation to any person who violates any provision of the anti-price gouging ordinance. The person may be given an opportunity to respond to the Notice and correct the violation within ~~[ten (10) days, or in a reasonable amount of time, as determined by the City Attorney.]~~ [fifteen working days.]

(1) Any person having any title or legal interest in the person the City Attorney found violated the anti-price gouging ordinance may appeal from the Notice of Violation, or any action of the City Attorney or Enforcement Authority, other than a Warning Letter, to the Independent Office of Hearings, pursuant to Chapter 2, Article 7, Part 8 ROA 1994 et seq., provided the appeal is made in writing and filed within ~~[(10) ten]~~ [fifteen] days of service of the Notice of Violation. Failure to timely appeal the Notice of Violation makes the Notice effective.”

SECTION 5. “Merit System; Personnel Policy,” ROA 1994, Chapter 3, Article 1, Section 25 is amended as follows:

**“§ 3-1-25 APPEAL FROM SUSPENSIONS, DEMOTION AND DISCHARGE.**

(A) A nonprobationary employee who has been suspended without pay for more than five days, demoted for disciplinary reasons, or discharged may appeal the discipline to the Personnel Board within ~~[ten calendar]~~ [fifteen] days of the occurrence of the disciplinary decision. The appeal shall be in writing and shall be submitted to the ~~[Chief Administrative Officer]~~ [City Clerk] with a copy to the employee's department head. ~~[The Chief Administrative Officer shall promptly refer the request to the Personnel Board for a hearing on the matter.]~~

...

(C) The ~~[Personnel Board]~~ [City Clerk] shall refer the appeal to a Personnel Hearing Officer ~~[to conduct an]~~ [who shall set the matter for an] evidentiary hearing. The Hearing Officer shall prepare and submit to the Board and the parties a report containing a summary of the evidence taken at the hearing and proposed findings of fact. The city and the employee may submit exceptions to the Hearings Officer's report and written argument within the time allowed by the Board's procedural rules.”

SECTION 6. “Lodgers’ Tax,” ROA 1994, Chapter 4, Article 4 is amended as follows:

**“§ 4-4-8 DETERMINATION OF EXEMPTION; APPEAL.**



The Mayor shall make the determination of whether or not a vendor is exempt from the occupancy tax. In the event the vendor is dissatisfied with any decision of the Mayor with respect to this article, ~~[he]~~ [they] may appeal the decision to the City [Independent] Hearing Officer [pursuant to the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[The burden of proof shall be upon the vendor to sustain his claim to an exemption.]~~

**§ 4-4-9 COLLECTION OF THE TAXES; REPORTING CHANGE IN OWNERSHIP.**

~~[(G) A nonrefundable hearing fee of \$50.00 shall accompany each appeal to the City Hearing Officer filed pursuant to §§ 4-4-6 or 4-4-9 ROA 1994.]~~

**§ 4-4-11 FAILURE TO PAY TAX OR MAKE RETURN; PENALTY; COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.**

(E) A vendor who disputes the assessment of any occupancy tax or related penalties and interest may, within five ~~[fifteen]~~ working days of the date of the notice from the city that the tax is delinquent, appeal the Mayor's decision to the City [Independent] Hearing Officer as set forth in [§ 4-4-9] [Chapter 2, Article 7, Part 8.]

SECTION 7. "Alcoholic Liquor License Tax," ROA 1994, Chapter 4, Article 5, Section 3 is amended as follows:

**"§ 4-5-3 LICENSE TAX.**

(J) Closing Establishment. In the event a licensee fails to pay the license tax and/or penalty thereon, the Police Department [shall provide to the licensee a notice of intent to close establishment. Licensee may, within fifteen days of the date of the notice, appeal the decision to the Independent Hearing Officer. If a hearing is requested, it shall follow the procedures prescribed in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8. If no appeal is filed, the Police Department] ~~[after notice to the licensee and hearing before the City Hearing Officer, and upon the written order of the City Hearing Officer]~~ shall forthwith close up the place of business of the licensee."

SECTION 8. "Hospitality Fee," ROA 1994, Chapter 4, Article 8 is amended as follows:

**"§ 4-8-6 DETERMINATION OF EXEMPTION; APPEAL.**

The Mayor shall make the determination of whether or not a vendor is exempt from the hospitality fee. In the event the vendor is dissatisfied with any decision of the Mayor with respect to this article, ~~[he]~~ [they] may appeal the decision to the [City] [Independent] Hearing Officer [pursuant to the provisions of the IHO Ordinance, ROA 1994, Chapter 2,

**Article 7, Part 8.]** ~~[The burden of proof shall be upon the vendor to sustain his claim to an exemption.]~~

**§ 4-8-8 COLLECTION OF THE FEE; REPORTING CHANGE IN OWNERSHIP.**

~~[(G) A nonrefundable hearing fee of \$50 shall accompany each appeal to the City Hearing Officer filed pursuant to §§ 4-4-6 or 4-4-9, ROA 1994.]~~

**§ 4-8-10 FAILURE TO PAY FEE OR MAKE RETURN; PENALTY; COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.**

(E) A vendor who disputes the assessment of any hospitality fee or related penalties and interest may, within ~~[five]~~ **[fifteen]** ~~[working]~~ days of the date of the notice from the city that the tax is delinquent, appeal the Mayor's decision to the ~~[City]~~ **[Independent]** Hearing Officer [pursuant to the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”

SECTION 9. “Public Purchases,” ROA 1994, Chapter 5, Article 5, Section 24 is amended as follows:

**“§ 5-5-24 DEBARMENT.**

~~[The Chief Procurement Officer, after reasonable notice to the business involved, shall have authority to recommend to the Mayor the suspension or debarment of a business for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years, and a suspension shall not exceed three months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the Chief Procurement. This is just an update, the title has changed to Chief Procurement Officer pursuant to its authority granted in § 5-5-6 of this article and such regulations shall provide for reasonable notice and an opportunity to be heard prior to suspension or debarment.]~~ [Debarment and suspension of a contractor, offeror, or bidder is governed by the City’s Debarment Ordinance §§ 5-7-1 et al.]”

SECTION 10. The “Contractor Debarment Ordinance,” ROA 1994, Chapter 5, Article 7 is repealed in its entirety and the following is enacted in its place:

**“[ARTICLE 7: DEBARMENT**

**§ 5-7-1 SHORT TITLE.**

This article may be referred to as the "Debarment Ordinance."

**§ 5-7-2 DEFINITIONS:**

As used in the Debarment Ordinance, the terms "person," "bidder," "offeror," and

"contractor" include the principals, officers, directors, owners, partners and managers of a person, bidder, offeror or contractor.

OFFEROR or BIDDER. A person or business that submits a response to a competitive solicitation.

CONTRACTOR. Any person or business that was awarded a contract pursuant to a competitive solicitation governed by the Public Purchases Ordinance, or that has obtained or attempted to obtain a contract relating to Public Works Projects.

CHIEF PROCUREMENT OFFICER. The City's Chief Procurement Officer, or their designee.

DIRECTOR OF THE DEPARTMENT OF MUNICIPAL DEVELOPMENT. The director of the City's Department of Municipal Development, or their designee.

§ 5-7-3 AUTHORITY TO SUSPEND OR DEBAR:

The Chief Procurement Officer or the Director of the Department of Municipal Development, may suspend a person from consideration for award of contracts under their authority if after reasonable investigation, they find that a person has engaged in conduct that constitutes cause for debarment pursuant to § 5-7-4.

(A) The term of a suspension pursuant to this section shall not exceed three months; however, if a person, including a bidder, offeror, or contractor, has been charged with a criminal offense that would constitute cause for debarment pursuant to § 5-7-4, the person's suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for suspension no longer exists.

(B) The Chief Procurement Officer or the Director of the Department of Municipal Development, after reasonable notice to the person involved and for cause, may recommend to the Mayor the debarment of the person from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years.

§ 5-7-4 CAUSES FOR DEBARMENT OR SUSPENSION; TIME LIMIT.

(A) A person shall be debarred or suspended within three years of the date final action is taken on a procurement. Causes for debarment or suspension include, but are not limited to:

(1) criminal conviction of a bidder, offeror, or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain unlawfully a public

or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(2) civil judgment against a bidder, offeror, or contractor for a civil violation related to obtaining unlawfully or attempting to obtain unlawfully a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(3) conviction of a bidder, offeror, or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification, or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;

(4) conviction of a bidder, offeror, or contractor under state or federal antitrust statutes relating to the submission of offers;

(5) criminal conviction of a bidder, offeror, or contractor for any other offense related to honesty, integrity, or business ethics;

(6) civil judgment against a bidder, offeror, or contractor for a civil violation related to honesty, integrity, or business ethics;

(7) civil judgment against a bidder, offeror, or contractor pursuant to the Unfair Practices Act [NMSA 1978, Chapter 57, Article 12];

(8) violation by a bidder, offeror, or contractor, of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the state Chief Procurement Officer or Director of the Department of Municipal Development, as applicable, to be so serious as to justify suspension or debarment action, including:

(a) willful failure to perform in accordance with one or more contracts; or

(b) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

(9) any other cause that the Chief Procurement Officer or the Director of the Department of Municipal Development or his or her designee determines to be so serious and compelling as to affect responsibility as a contractor;

(10) willful violation by a bidder, offeror, or contractor of the provisions of the Public Purchases Ordinance, Chapter 5, Article 5, R.O.A. 1994; or

(11) Previous debarment or prior finding by any agency of the federal government, the State of New Mexico, any local public body of the State of New Mexico, or any state of the United States, that the person is otherwise ineligible to receive funds from the agency or government.

§ 5-7-5 DEBARMENT OR SUSPENSION; NOTICE OF DETERMINATION.

(A) The Chief Procurement Officer or the Director of the Department of Municipal Development, shall issue a written determination to debar or suspend a person. There is no right to appeal a suspension pursuant to § 5-7-4. A determination to debar or suspend shall contain the following statements or information:

(1) whether the action contemplated is for debarment or suspension;

(2) that the maximum time period of a debarment is three years, and the recommended maximum time of the debarment, if less than three years;

(3) the reasons for the action, which shall include a summary of the person's conduct to which the action relates and a listing of any contracts related to such conduct;

(4) that the action is brought pursuant to the provisions of the Debarment Ordinance and the regulations promulgated thereunder;

(5) that sufficient facts exist, unless rebutted, to support the proposed suspension or debarment, and identification of such facts;

(6) if the proposed action is for debarment, notice that the Chief Procurement Officer or the Director of Municipal Development shall proceed to debar the person unless the person makes a written request for a hearing within 15 consecutive calendar days from the day the person receives the notice of the proposed action;

(7) if the proposed action is for debarment, the address for the Office of the City Clerk where the person's request for hearing shall be sent; and

(8) if the proposed action is for debarment, that the person may be represented throughout the proceeding by an attorney licensed to practice law in the state of New Mexico.

(B) A copy of the determination made pursuant to § 5-7-5 shall be:

(1) mailed to the person's last known address on file with the City's Purchasing Division, by first class mail, within three business days after issuance of the written determination; or

(2) transmitted electronically to the person's last known email address on file within

three business days after issuance of the written determination.

(C) Failure to request hearing on debarment: If the person fails to deliver a written request for a hearing to the Office of the City Clerk within fifteen days, a final determination shall be made by the Chief Procurement Officer or the Director of Municipal Development or their designee.

#### § 5-7-6 HEARING PROCEDURES.

Hearings on debarment shall be conducted pursuant to the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”

SECTION 11. The “Water Conservation Landscaping and Water Waste Ordinance,” ROA 1994, Chapter 6, Article 1, Part 1, Section 12 is amended as follows:

#### “§ 6-1-1-12 VARIANCES AND APPEALS

(B) Appeal of § 6-1-1-5 (Watering Restrictions), § 6-1-1-6 (Water Waste), and § 6-1-1-7 (Special Permits). Any responsible party may appeal fees for violations of §§ 6-1-1-5, 6-1-1-6, and 6-1-1-7 to the [City] [Independent] Hearing Officer [pursuant to the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] [Ordinance by filing an appeal within seven calendar days of receiving a notice of violation. Such request shall be made in writing and filed in the Office of the City Clerk. The appeal shall identify the property and state the grounds of appeal together with all material facts in support thereof. A filing fee of \$20 shall be added to the water bill in the event the violation is upheld by the Hearing Officer. When a hearing is requested, the Hearing Officer shall send written notice by certified mail, return receipt requested, to the appellant of the time and place of the hearing. At the hearing the appellant shall have the right to present evidence as to the alleged fact upon which the Mayor based the determination of the need for assessment of fee or restriction of service and any other facts which may aid the Hearing Officer in determining whether this article has been violated. The Hearing Officer shall, within seven working days following the hearing, issue a written decision specifying the fee, if appropriate, and the action that must be taken to avoid additional penalty. Fees will be void and service will not be restricted if the written decision is not issued within seven working days.

(C) Judicial Review. The exclusive remedy for parties dissatisfied with the action of the City Hearing Officer on §§ 6-1-1-5, 6-1-1-6, and 6-1-1-7 shall be the filing of a petition for a writ of certiorari with the State District Court. The petition for review shall be limited

~~to the record made at the administrative hearing held pursuant to this article.]”~~

**SECTION 12.** The “Water Conservation Large Users Ordinance,” ROA 1994, Chapter 6, Article 1, Part 4 is repealed in its entirety.

**SECTION 13.** “Cross-Connection Prevention and Control,” ROA 1994, Chapter 6, Article 2 is repealed in its entirety.

**SECTION 14.** The “Street Excavation and Barricading Ordinance,” ROA 1994, Chapter 6, Article 5, Part 2, Section 29 is amended as follows:

**“§ 6-5-2-29 APPEALS.**

**(B) Appeal of § 6-5-2-28(E).** Any applicant may appeal suspensions or fee assessments to the City Hearing Officer by filing an appeal within ~~[seven calendar]~~ **[fifteen]** days of receiving a notice of suspension. [Procedures regarding the hearing shall be the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[Such request shall be made in writing and filed in the Office of the City Clerk. The appeal shall identify the applicant and state the grounds of appeal, together with all material facts in support thereof. A filing fee as established by regulation shall be paid to the Clerk. In the event the appeal is upheld, the filing fee shall be refunded. When a hearing is requested, the Hearing Officer shall send written notice by certified mail, return receipt requested, to the appellant of the time and place of the hearing. At the hearing, the appellant shall have the right to present evidence as to the alleged facts upon which the Mayor based the termination of the propriety of the suspension and any other facts that may aid the Hearing Officer in determining whether this article has been violated. The Hearing Officer shall, within seven working days following the hearing, issue a written decision specifying whether the suspension is upheld.]~~

**(C) Judicial Review.** ~~The exclusive remedy for parties dissatisfied with the action of the City Hearing Officer shall be the filing of a petition for a writ of certiorari with the State District Court. The petition for review shall be limited to the record made at the administrative hearing held pursuant to this article.]”~~

**SECTION 15.** “Newsracks,” ROA 1994, Chapter 6, Article 7 is amended as follows:

**“§ 6-7-7 VIOLATIONS OF ORDINANCE.**

Upon determination by the Mayor that a newsrack has been installed, used or maintained in violation of the provisions of this article, an order to correct the offending condition will be issued to the distributor of the newsrack. Such order shall be telephoned

to the distributor and confirmed by mailing a copy of the order by certified mail return receipt requested. The order shall specifically describe the offending condition, suggest actions necessary to correct the conditions and inform the newsrack distributor of the right to appeal. Failure to properly correct the offending conditions within 10 days (excluding Saturdays, Sundays and legal holidays) after the mailing date of the order or to appeal the order within ~~[three days]~~ [fifteen days] after its receipt shall result in the offending newsrack being summarily removed and processed as unclaimed property. If the offending newsrack is not properly identified as to owner under provisions of § 6-7-3 (D), it shall be removed immediately and processed as unclaimed property. An impound fee, which shall be measured by the city's cost and expense of impounding, shall be assessed against each newsrack summarily removed. The Mayor shall set the impound-fee formula by rule, which shall be available to the public. The Mayor shall cause inspection to be made of the corrected condition of a newsrack reinstalled after removal under this section. The distributor of the newsrack shall be charged a \$10 inspection fee for each newsrack so inspected. This charge shall be in addition to all other fees and charges required under this article.

#### § 6-7-8 APPEALS.

Any person or entity aggrieved by a finding, determination, notice, order or action taken under the provisions of this article may appeal and shall be apprised of his right to appeal to the ~~[City]~~ [Independent] Hearing Officer. An appeal must be ~~[perfected]~~ [submitted to the City Clerk] within ~~[three]~~ [fifteen] days after receipt of notice of any protested decision or action. [Procedures regarding the hearing shall be the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[by filing with the office of the Mayor a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than 10 days after receipt of the letter of appeal. Appellant shall be given at least five days notice of the time and place of the hearing. The City Hearing Officer shall give the appellant and any other interested party a reasonable opportunity to be heard, in order to show cause why the determination of the Mayor's staff should not be upheld. At the conclusion of the hearing, the City Hearing Officer shall make a final and conclusive decision. This decision shall be immediately appealable to a court of competent jurisdiction. A nonrefundable hearing fee of \$50.00 shall accompany each appeal to the City Hearing Officer that is filed pursuant to this Section.]~~



**SECTION 16. The “Albuquerque Free Expression and Parade Ordinance,” ROA 1994, Chapter 7, Article 3, Section 13 is amended as follows:**

**“§ 7-3-13 APPEAL PROCEDURE.**

**Any applicant shall have the right to appeal the denial of a parade or public assembly permit to ~~[an Administrative]~~ [the Independent] Hearing Officer. The denied applicant shall make the appeal within ~~[five]~~ [fifteen] days after receipt of the denial. [Procedures regarding the hearing shall be the procedures outlined in the IHO, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[by filing a written notice with the Mayor and the Mayor's agent that denied the permit application. The hearing shall take place within 60 days from the date the Mayor and his agent receives the notice of appeal.]”~~**

**SECTION 17. “Sale of Motor Vehicles,” ROA 1994, Chapter 7, Article 5, Section 4 is amended as follows:**

**“§ 7-5-4 TOWING.**

**(B) The warning sticker shall contain the following information:**

- (1) The date and time the warning sticker was affixed to the vehicle;**
- (2) A statement that pursuant to this article, if the vehicle is not removed within 24 hours of the time the sticker is affixed, it may be taken into custody and stored at the owner's expense;**
- (3) A statement that, if the vehicle is towed pursuant to this article, the owner will have the opportunity to ~~[challenge]~~ [appeal] said action at a hearing, and a written notice of the procedure for said hearing will be mailed to the owner's address as provided by State Motor Vehicle Division files or the files of the appropriate motor vehicle regulatory agency of another state;**
- (4) The location and telephone number where additional information may be obtained; and**
- (5) The identity of the affixing person.**

**(C) After a vehicle is taken into custody and stored pursuant to this article, the affixing department shall [provide notice of possession to the owner of the vehicle by written notice. The vehicle owner may, within fifteen days of the date of the notice, appeal the action to the Independent Hearing Officer. If a hearing is requested, procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8, apply.] ~~[initiate notification and hearing procedures as set forth in §§ 8-5-2-1 et seq., except that the~~**

~~decision of the hearing officer as set forth therein shall be limited to whether the vehicle was lawfully impounded for violation of this article. If it is determined at the hearing that the location and status of the vehicle was not in violation of this article, the owner of such vehicle shall not be liable for any expenses incurred as a result of the taking and storage of such vehicle, and the department which authorized the taking and storage of such vehicle shall be liable for such expenses, the department which authorized the taking and storage of such vehicle shall be liable to the owner for the amount paid by the owner.]”~~

SECTION 18. “Motor Vehicle Seizure; Forfeiture,” ROA 1994, Chapter 7, Article 6 is repealed in its entirety.

SECTION 19. “Motor Vehicle Seizure; Forfeiture; Violent Crimes” ROA 1994, Chapter 7, Article 9 is repealed in its entirety.

SECTION 20. The “Vehicle Nuisance Ordinance,” ROA 1994, Chapter 7, Article 10, Section 99 is amended as follows:

**“§ 7-10-99 PENALTY.**

**[(A) First Offense.] A person who violates any provision of this Article [the first time] shall be subject to the penalty provisions of § 1-1-99 ROA 1994.**

**[(B) Second Offense. A second offense is a second violation of any one of the above listed specific violations in any four year period of time. For a second offense, the violator shall be subject to the penalty provisions of § 1-1-99 ROA 1994. In addition, the vehicle of the violator shall be subject to the temporary seizure penalty below.**

**(1) Temporary Seizure. For a second offense, the vehicle the offender was driving at the time of the offense will be temporarily seized by the City by placement of an immobilization device ("Boot") on the vehicle by the Albuquerque Police Department ("APD"). The Boot shall remain on the vehicle for thirty days. APD will remove the Boot forthwith within a reasonable time not to exceed five days after the thirty days has expired.**

**(2) Storage. The boot will be placed on the vehicle at a storage location chosen by APD or at the violator's residence or other legal location chosen by the violator. If the violator chooses to place the vehicle at any location other than a storage site selected by APD, the violator shall agree to hold the City harmless from any property damage or other liability incurred during the time of seizure, storage and transportation to storage. If the violator chooses to place the vehicle at any location other than a storage site selected by APD, the violator or owner shall not be responsible for storage fees.**

~~(3) Notice of Seizure. Prior to booting the vehicle, APD will deliver a Notice of Seizure to the violator. A Notice of Seizure will not be required if the vehicle is seized pursuant to an arrest of the driver or seized pursuant to a search under a warrant.~~

~~(4) Notice to Registered Owner. APD will immediately mail by ordinary mail a Notice of Seizure to the registered owner if the registered owner is a person different than the violator according to the records of the New Mexico Motor Vehicle Division ("MVD").~~

~~(5) Contents of Notice. The Notice of Seizure shall contain the following information:~~

~~-The license plate number;~~

~~-Make, type and color of the seized vehicle;~~

~~-Location of storage;~~

~~-The reason for seizure including the violated section of this Article;~~

~~-The name and phone number of a city employee who can provide other information;~~

~~-A statement that daily storage charges and a towing charge will be assessed;~~

~~-The address of the hearing officer and notice that any person has the right to contest the propriety of the seizure by requesting a hearing in writing within ten days from the date the Notice of Seizure was mailed or delivered.~~

~~(6) No Return. The vehicle seized will not be subject to replevin or other civil proceeding for return of the vehicle.~~

~~(7) Hearing. If the violator or owner seeks to challenge the seizure, the violator or owner must within ten consecutive calendar days from the date the Notice of Seizure was mailed or delivered request in writing a hearing to be conducted by the City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be scheduled within 20 consecutive days of the receipt of the request. The hearing is an informal hearing and not bound by the technical rules of evidence. The hearing officer will determine only whether APD had probable cause to seize the vehicle under this Article.~~

~~If the hearing officer finds that APD did not have probable cause to seize the vehicle or that the vehicle should otherwise be released, the hearing officer shall issue an Order of Release which shall be delivered to the owner or violator. Upon receipt of any such Order~~

~~of Release by APD, APD shall release the vehicle to the owner or violator and storage fees shall be waived.~~

~~Prior to release of the vehicle at the expiration of 30 days or otherwise, the owner or violator or their agent must pay all reasonable costs of towing and storage of the vehicle including a charge of eight dollars per day for the Boot or appropriate storage. The vehicle shall not be released until all charges are paid and written proof of insurance of the vehicle is provided to APD. The City shall not be responsible to any third person who incurs any damages by an uninsured vehicle inadvertently released by APD. The vehicle shall not be released if an inspection reveals that the vehicle is in violation of any section of this Article. If the vehicle is in violation of § 7-10-3(E) above pertaining to modification of an exhaust system or improper removal of pollution controls, the owner or violator shall have fifteen days from the release date to repair the condition. Failure to repair the violation of § 7-10-3(E) within fifteen days of the release date is a separate violation of this Article.~~

~~(C) Third or Subsequent Offense. A third or subsequent offense is a third or greater violation of any one of the above listed specific violations in any four year period of time. For a third or subsequent offense, the violator shall be subject to the penalty provisions of § 1-1-99 ROA 1994. In addition, the vehicle of the violator shall be subject to forfeiture provisions of § 7-6-1 et seq., ROA 1994.]”~~

SECTION 21. “Prostitution Vehicle Forfeiture,” ROA 1994, Chapter 7, Article 14 is repealed in its entirety.

SECTION 22. The Traffic Code, “Stopping, Standing and Parking,” ROA 1994, Chapter 8, Article 5, Part 2 is amended as follows:

“§ 8-5-2-10 HEARING.

(A) Hearing Officer and Scheduling. Hearings, if requested within the seven consecutive day period set forth in §§ 8-5-2-3(D) and 8-5-2-9(B), shall be conducted by the City Hearing Officer, [in accordance with the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994).~~ The hearing shall be held within ten city working days of receipt by the City Clerk of the request for hearing unless the hearing is continued at the request of the party requesting the hearing or such person waives the required time for hearing. If a person requests a hearing and secures the release of the vehicle pursuant to division (E) of this section, and a summons and complaint or parking ticket has been issued which alleges a

~~violation of §§ 8-5-2-1 et seq. which formed the basis of the impoundment, the hearing officer may schedule the hearing provided by this section as soon as possible after the completion of the hearing on any criminal matter brought pursuant to § 8-5-2-99.]~~

(B) ~~Scope, Burden of Proof and Procedures. [Hearings shall be informal and not bound by the technical rules of evidence. At the request of any party a record will be made of the hearing.] The party requesting the hearing bears the burden of establishing that such person has the right to possession of the vehicle. The city bears the burden of establishing the validity of the proposed or completed impoundment. The standard of proof is a preponderance of the evidence. [Procedures regarding the hearing shall be the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] [The hearing officer shall determine whether: (1) the vehicle is or is not abandoned or inoperable on public property; (2) the vehicle is or is not abandoned or inoperable on private property and there was no consent of the property owner, tenant or occupant for the vehicle to be on the property; (3) the vehicle was inoperable on private property; or (4) the vehicle was lawfully impounded under § 8-5-2-4, summary impoundment. The hearing officer shall not award attorney's fees. The hearing officer shall prepare a written decision and mail written notice of the decision to the parties within five working days of the hearing.~~

(C) ~~Probable Cause Hearing Requests for a post impoundment hearing shall be filed with the City Clerk. The City Clerk shall notify the city department responsible for impounding the motor vehicle and the hearing officer that the request for hearing has been filed. Within two city working days after the responsible city department receives a request for a hearing under this section from the City Clerk, the responsible city department shall provide to the hearing officer the records concerning the impound. The hearing officer shall determine from these records, and from any supplementary affidavits as the responsible department may provide, whether or not probable cause existed for the impoundment of the vehicle. Probable cause hearings shall be held only for vehicles already impounded. If the hearing officer determines that no probable cause existed for the impoundment based on these written materials, the officer shall so find and shall issue a final order that the vehicle shall be released immediately to the person entitled to possession and shall assess the costs of removal and impoundment against the city. Copies of such order shall be provided to the responsible city department and mailed to~~

~~the person requesting the hearing. If the hearing officer determines that probable cause existed, the responsible city department and the person requesting the hearing shall be notified of the decision and a hearing shall be scheduled. A finding of probable cause shall not change the burden of proof at the hearing.~~

**[(C)] [(D)] Pre-impoundment Hearings.** Requests for a pre-impoundment hearing shall be filed with the City Clerk. The City Clerk shall notify the city department responsible for impounding the motor vehicle and the hearing officer that the request for hearing has been filed. At a hearing prior to the impoundment of a vehicle allegedly parked in violation of §§ 8-5-2-1 et seq., the hearing officer shall determine whether the vehicle is parked in violation of such sections. If the hearing officer so finds, the hearing officer shall so notify the Mayor or the Chief and shall order the vehicle removed and impounded and assess the impoundment charges thereof against the vehicle.

**[(D)] [(E)] Post Impoundment Hearing and Bond.** Requests for a post impoundment hearing shall be submitted to the City Clerk within the 30 day notice period required in §§ 8-5-2-3(E) and 8-5-2-12(A). + the impoundment charges. If the hearing officer does not so find, the officer shall order the vehicle released immediately to the person entitled to possession, assess impoundment charges against the city and issue a certificate of release showing the date and hour of the release and provide a copy to the owner of the vehicle. Upon receipt of the owner's copy of such certificate, the authorized garage (impoundment lot) having custody of the vehicle shall release the vehicle to the owner without charge. The hearing officer shall determine that the party receiving the certificate of release is entitled to possession of the vehicle and has presented proof of ownership. If the owner fails to present the certificate of release to the impoundment lot or garage within 24 hours of its issuance, excluding days when the garage is not open for business, the owner shall pay for all subsequent storage charges. The requirement to present the certificate of release as required in this division shall be printed on the certificate.

**[(F)] Appeal.** ~~If the hearing officer finds that the vehicle was abandoned or inoperable pursuant to §§ 8-5-2-1 et seq., the person challenging the impoundment may obtain review of the decision of the hearing officer by the Second Judicial District Court upon filing a Writ of Certiorari within 30 days of receipt of written notice of the hearing officer's decision.]~~

**[(E)] [(G)] Failure to Request Hearing.** Failure of any person to request an

impoundment hearing within the time provided or attend any such hearing constitutes a waiver of the right to such hearing.

**§ 8-5-2-12 DISPOSITION OF MOTOR VEHICLES.**

(A) The Mayor may dispose of impounded motor vehicles by following the procedures provided by state law for the disposal of unclaimed property or [as otherwise provided by law]. ~~[may follow the following procedures. The Mayor shall give reasonable notice to the owner and any lien holders of record by mail or publication at least 30 days before disposition of the vehicle. Notice shall be deemed given on the date it is delivered, mailed or published, whichever is earliest. Before giving notice, the Mayor shall make inquiry through the licensing authority of the state of registration of the vehicle as to the name and mailing address of the owner and lien holders of record, if any exist, that can be ascertained from the license plate or vehicle identification number. Notice shall be delivered or sent by certified mail to such persons. If the inquiries by the Mayor produce no information, the Mayor shall publish the notice at least once in a newspaper of general circulation in the city. The notice shall state the grounds upon which impoundment was authorized, the location of the vehicle, and the person to whom the owner or lien holder may apply to reclaim the vehicle prior to its disposal. Notice given to the owner pursuant to §§ 8-5-2-3(E), 8-5-2-5 and 8-5-2-9(D) shall satisfy the requirement of this section for notice to the owner.~~

(B) ~~If the vehicle has been appraised for a value less than the towing and storage, the Mayor may sell the vehicle to the towing and impoundment lot operators, if such were involved, for the amount of the accrued charges. In all other instances the Mayor may sell the vehicle at private sale or at public sale or dispose of the vehicle as otherwise allowed by law.~~

(C) ~~Disposition of Proceeds. The proceeds of sale of a vehicle shall be distributed in the following order: The costs of towing and storing the vehicle. From the balance, if any, there shall be deposited into the general fund of the city the administrative impound fee. The remaining balance, if any, shall then be paid first to any lien holder of record, and second to any owner of record as their interests may appear on such records, or to any person submitting proof of an enforceable interest in such vehicle as of the date of sale by the city. If no such person is known to the Mayor, such balance shall be deposited into the general fund of the city.~~

~~(D) Redemption. There is no right of redemption from any sale made pursuant to this section. After a vehicle has been sold pursuant to this section, neither the city nor any officer, agent or employee thereof is liable for any failure to deliver such vehicle to any person other than the purchaser at such sale.]”~~

SECTION 23. The “Synthetic Intoxicant Ordinance,” ROA 1994, Chapter 9, Article 1, Part 4, Section 6 is amended as follows:

**“§ 9-1-4-6 APPEAL.**

~~[(A) ]Upon delivery of a Cease and Desist Order and Notice of Violation, the business has [ten days] [fifteen days] to appeal to a hearing officer[ in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] [under this Code of Ordinances]~~

~~[(B) The decision of the hearing officer may be appealed to a court of competent jurisdiction.]”~~

SECTION 24. The “Humane and Ethical Animal Rules and Treatment (HEART) Ordinance,” ROA 1994, Chapter 9, Article 2, Part 7, Section 1 is amended as follows:

**“§ 9-2-7-1 INSPECTIONS AND HEARING PROCESS.**

(H) Appeal. A Person whose application for a Permit or Permit renewal has been approved on condition or denied, and a Permit Holder whose Permit has been suspended or revoked, may submit to the [Mayor] [City Clerk] a written request for a hearing, provided that the written request is received [at AACC] [by the City Clerk] within [five] [fifteen] days of the applicant's receipt of the written notice of denial or conditional approval. The hearing shall be conducted [within a reasonable time] [in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.].

~~[(I) Hearing. Hearings shall be conducted by the Mayor at a time and a place designated by the Mayor and shall be recorded. All witnesses shall be sworn or affirmed. Written notice of the time, date and place of the hearing shall be mailed to the applicant and the Mayor.~~

~~[(I) (J)]~~

~~[(J) (K)]~~

~~[(K) (L)]~~

~~[(L) (M)]”~~

SECTION 25. The “Albuquerque Alarm System Ordinance,” ROA 1994, Chapter 9, Article



3 is amended as follows:

**“§ 9-3-13 EXCESSIVE FALSE ALARMS, SERVICE FEES.**

(G) The alarm user shall be given written notice of any fees and fines chargeable under this section. Such fees and fines shall be paid to the False Alarm Reduction Unit within 30 calendar days of the date of the notice of fees and fines due, unless the alarm user requests a hearing pursuant to [§ 9-3-14,] [the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8,] in which event the payment of the fees shall be suspended pending the decision of the Hearing Officer.

**§ 9-3-14 APPEALS, HEARINGS.**

(A) Any person or entity that receives a notice of a false alarm or a notice of fees or fines due under this Ordinance may ~~[appeal by filing a notice of appeal]~~ [file a written request for appeal] with the False Alarm Reduction Unit supervisor. The ~~[notice of appeal]~~ [written request for review] must be received by the False Alarm Reduction Unit supervisor within 30 days from receipt of the notice by the person or entity or within 33 days of the date the notice was mailed by the False Alarm Reduction Unit, whichever comes first.

(B) If the False Alarm Reduction Unit supervisor denies the ~~[appeal]~~ [written request for review], the False Alarm Reduction Unit supervisor shall send written notice of the denial and a statement of the right to appeal to a Hearing Officer.

(C) The decision of the False Alarm Reduction Unit supervisor may be appealed to an administrative Hearing Officer. [The Hearing Officer shall conduct a hearing in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[A filing fee of \$50.00 shall accompany the notice of appeal. The filing fee shall be refunded if the Hearing Officer finds in favor of the appellant. The failure of an appellant to appear at the appeal hearing shall extinguish the appeal. The Hearing Officer shall issue a written decision within 30 days of the hearing.]~~

**§ 9-3-15 SUSPENSION AND REVOCATION OF ALARM BUSINESS PERMITS.**

(B) If the False Alarm Reduction Unit supervisor determines that any alarm business permit holder has violated this section, the False Alarm Reduction Unit supervisor shall send a notice of intent to revoke the alarm business permit. After the alarm business permit holder receives the notice of intent to revoke the alarm business permit, the holder may admit fault and surrender the alarm business permit within 30 days or demand a hearing. The demand for hearing shall be in writing and mailed to the ~~[False Alarm~~

~~Reduction Unit supervisor~~ [City Clerk] within ~~[30]~~ [fifteen] days of receipt of the notice of intent to revoke. ~~[A filing fee of \$50.00 shall accompany the notice of demand for hearing. The filing fee shall be refunded if the Hearing Officer finds in favor of the appellant.]~~

~~(C) [Upon receipt of a notice of demand for hearing, the False Alarm Reduction Unit supervisor shall promptly schedule a hearing before an administrative Hearing Officer who shall hold a hearing within 60 days from the date of the receipt of the notice of demand.~~

~~(D)] The Hearing Officer shall conduct a hearing [and issue a written decision within 30 days of the date of the hearing] [in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]~~

The Hearing Officer may:

- (1) Suspend the alarm business permit for a reasonable period of time not less than 30 days nor more than 120 days,
- (2) Permanently revoke the alarm business permit, or
- (3) Find in favor of the alarm business permit holder.”

SECTION 26. The “Food Sanitation Ordinance,” ROA 1994, Chapter 9, Article 6, Part 1 is amended as follows:

**“§ 9-6-1-8 COMPLIANCE PROCEDURES.**

~~(H) Hearings. The hearings provided for in this ordinance shall be conducted by [the Independent Hearing Officer in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] [a hearing officer at a time and place designated by the hearing officer. Based upon the findings of such hearing, the enforcement authority shall sustain, modify, or rescind any official notice, order, or other action by the enforcement authority considered in the hearing. A written report by the hearing officer of their findings shall be furnished to the permit holder by the enforcement authority. Any action of the enforcement authority for which a hearing is not otherwise provided for in this ordinance, which action adversely impacts the permit holder, is subject to review under this section if a hearing request is filed with the enforcement authority within ten days of the action.~~

~~[(I) Judicial Review. The exclusive remedy or any party dissatisfied with any final decision of the hearing officer should file a petition to the District Court within 30 days after receipt of written notice of the decision of the concerned party.]~~

~~[(J)] [(I)]~~ Injunctive Relief. As an additional remedy, if any food establishment

violates the provisions of §§ 9-6-1-1 et seq., the enforcement authority may seek injunctive relief in a court of competent jurisdiction.

~~[(K)] [(J)]~~ Issuance of Citations. Citations may be issued by the enforcement authority for failure to comply with any requirement set forth in §§ 9-6-1-1 et seq.

~~[(L)] A nonrefundable hearing fee of \$50.00 shall accompany each application for hearing conducted by the hearing officer requested pursuant to this section.]~~

#### **§ 9-6-1-9 EXAMINATION AND CONDEMNATION OF FOOD.**

Samples of food, drink, and other substances may be taken and examined by the enforcement authority as often as necessary to determine freedom from unwholesomeness, adulteration or misbranding. Samples submitted for laboratory analysis shall be submitted to a laboratory approved by and under cognizance of a federal or state agency. The enforcement authority may, upon written notice to the owner or person in charge, place a hold order on any food which he determines or has probable cause to believe to be unwholesome or otherwise adulterated or misbranded. The enforcement authority shall tag, label or otherwise identify any food subject to the hold order and permit it to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on the food by the enforcement authority, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the enforcement authority, except on order by a court of competent jurisdiction. The hold order shall state that a request for a hearing may be filed within ~~[ten]~~ [fifteen] days and that if no hearing is requested the food shall be destroyed at the owner's expense. After the owner or person in charge has had a hearing as requested, and on the basis of evidence produced at such hearing, or on the basis of the enforcement authority's examination in the event a written request for a hearing is not received, the hold order may be vacated or the owner or person in charge of the food may be directed by written order to denature or destroy such food or bring it into compliance with the provisions of §§ 9-6-1-1 et seq. An order to destroy or denature food shall be stayed if the order is appealed to a court of competent jurisdiction within three days.

#### **§ 9-6-1-13 FEES.**

(B) Temporary Fees. The enforcement authority is authorized to collect the following fees until such time as they are adjusted as outlined in § 9-6-1-18(A). These fees are for the

purpose of paying the costs reasonably incurred in administering and enforcing the Food Sanitation Ordinance.

**(10) Payment of Fees.**

(b) In the event that any person fails to pay the annual fee by the due date, or remits an amount less than the correct amount of the fee due, the enforcement authority shall determine the amount of the fee due using such statement or other available information. The enforcement authority shall thereupon give written notice to the permit holder of the amount due, which amount shall be paid within five working days of receipt of such notice. Any party aggrieved by the enforcement authority's determination as to the amount due may request a hearing pursuant to [§ 9-6-1-13] [the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]

SECTION 27. The "Retailers, Meat Markets and Wholesaler Ordinance," ROA 1994, Chapter 9, Article 6, Part 2 is amended as follows:

**"§ 9-6-2-10 COMPLIANCE PROCEDURES.**

(C) **Suspension of Permits.** Permits may be suspended by the enforcement authority for failure of the holder to comply with the requirements of §§ 9-6-2-1 et seq. or of other applicable laws. An establishment's operating permit shall be immediately suspended in lieu of a third downgrading during any 36-month period under the same business management. Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of this section, the permit holder or operator shall be notified in writing that the permit is, upon service of this notice, immediately suspended, and that an opportunity for a hearing will be provided if a written request for hearing is filed with the ~~[enforcement authority by the permit holder within five working days]~~ [City Clerk's office within fifteen days]. Notwithstanding the other provisions of §§ 9-6-2-1 et seq., whenever the enforcement authority finds an imminent health hazard or other conditions in the operation of a food establishment which, in his judgment, constitute a substantial hazard to the public health, he may without any prior warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which such action shall be taken; and, if deemed necessary, such order shall state that the permit is immediately suspended and all operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith, and shall be granted a hearing

~~[within five working days,] upon written request to the [enforcement authority] [in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]~~

(E) **Revocation of Permits.** For three or more suspensions within a 60-month period under the same business management; for failure of an establishment which has received a Grade of "Unsatisfactory" to meet the requirements of an "Approved" Grade within the required time period; for the fourth downgrading or second suspension in lieu of downgrading within any 36-month period under the same business management; for refusal of entry after proper identification has been tendered; or for interference with the enforcement authority in the performance of his duties, the permit may be revoked after an opportunity for a hearing has been provided by the enforcement authority. Prior to such action, the enforcement authority shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be revoked at the end of five working days following the service of such notice, unless a request for a hearing is filed ~~[with the enforcement authority by the permit holder within such five working-day period]~~. A permit may be suspended for cause pending its revocation or a hearing relative thereto. A permit may be revoked after a hearing in lieu of a third suspension within a 60-month period.

(F) **Hearings.** The hearings provided for in this division shall be conducted by the [Independent Hearing Officer in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[enforcement authority at a time and place designated by him. Based upon the record of such hearing, the enforcement authority shall make a finding and shall sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the enforcement authority.]~~

(G) **Judicial Review.** ~~The exclusive remedy for any party dissatisfied with any final decision of the enforcement authority shall be filing of a Petition for Writ of Certiorari to the District Court within 30 days after written notice of the decision of the concerned party. The petition for review shall be limited to the record.~~

(H) **Injunctive Relief.** ~~As an additional remedy, if any food establishment violates the provisions of §§ 9-6-2-1 et seq., the enforcement authority may seek injunctive relief in a court of competent jurisdiction.]~~

**[(H)] [(G)] Issuance of Citations.** Citations may be issued by the enforcement authority for failure to comply with any requirement set forth in §§ 9-6-2-1 et seq.

**§ 9-6-2-11 EXAMINATION AND CONDEMNATION OF FOOD.**

Samples of food, drink, and other substances may be taken and examined by the enforcement authority as often as necessary to determine freedom from unwholesomeness, adulteration or mislabeling. Samples submitted for laboratory analysis shall be submitted to a laboratory approved by and under cognizance of a federal or state agency. The enforcement authority may, upon written notice to the owner or person in charge, place a hold order on any food which he determines or has probable cause to believe to be unwholesome or otherwise adulterated or mislabeled. The enforcement authority shall tag, label or otherwise identify any food subject to the hold order and permit it to be suitably stored unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on the food by the enforcement authority, and neither such food nor the containers thereof shall be relabeled, repacked, reprocessed, altered, disposed of, or destroyed without permission of the enforcement authority, except on order by a court of competent jurisdiction. The hold order shall state that a request for a hearing may be filed within ~~ten~~ fifteen days and that if no hearing is requested the food shall be destroyed at the owner's expense. [A hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] After the owner or person in charge has had a hearing as requested, and on the basis of the enforcement authority's examination in the event a written request for a hearing is not received, the hold order may be vacated or the owner or person in charge of the food may be directed by written order to denature or destroy such food or bring it into compliance with the provisions of §§ 9-6-2-1 et seq. or shall be stayed if the order is appealed to a court of competent jurisdiction within three days.

**§ 9-6-2-15 INSPECTION AND TRANSFER FEES.**

**(D) Payment of Fees.**

**(2)** In the event that any person fails to pay the inspection fee or transfer fee by the due date, or remits an amount less than the correct amount of inspection fee, the Mayor shall determine the amount of the inspection fee due, using such statement or other available information. The Mayor shall thereupon give written notice to such person of the

amount due, which amount shall be paid within five working days of receipt of such notice. Any such person may protest the amount so determined by the Mayor within [fifteen] ~~[five working]~~ days of receipt of such notice [pursuant to the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8]. ~~[The Mayor shall give at least five working days notice of the hearing at which protestant may appear at the hearing and present evidence of the amount of gross sales done. Based upon the evidence presented at such hearing, the Mayor shall determine the amount due, if any, and protestant shall pay such amount within five working days of the Mayor's determination.]~~

(3) In the event that the inspection fee is not paid by the April 15 due date or within [fifteen] ~~[five working]~~ days of the Mayor's determination on any protest filed, the Mayor may file a complaint before the Metropolitan Court, alleging a violation of §§ 9-6-2-1 et seq. and may also take such action as necessary to collect the inspection fee including any late charges.

(6) In addition to the remedies provided above, the Mayor may suspend or revoke any permit issued pursuant to §§ 9-6-2-1 et seq. for failure to pay that inspection fee including any late charges. [Upon suspension or revocation of any permit, permit holder may appeal suspension or revocation pursuant to the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[If the Mayor has reasonable cause to believe that a person has failed to pay the inspection fee including any late charges, the Mayor shall give the permit holder 15 days written notice of a hearing to be held before the Mayor to determine whether or not the permit shall be suspended or revoked. At the hearing, the permit holder shall have the right to present evidence which may aid the Mayor in determining whether the inspection fee including any late charges has been paid. If, after such hearing, the Mayor finds the inspection fee including any late charges has not been paid, the Mayor shall suspend or revoke the permit and cause to be filed within five working days after the hearing, in the office of the City Clerk and served upon the permit holder, a written statement of the facts upon which such finding is based.]~~ Any permit that has been suspended or revoked for nonpayment of the inspection fee including any late charges shall be reinstated upon payment of the inspection fee including any late charges.”

SECTION 28. “Raw Produce Stands,” ROA 1994, Chapter 9, Article 6, Part 3, Section 2 is amended as follows:

**“§ 9-6-3-2 PERMITS.**

**(B) Revocation of Permit.** Any permit issued under this section may be revoked by the Mayor upon violation of any of the requirements or provisions of §§ 9-6-3-1 et seq., provided that any person whose permit is revoked may apply for a hearing before the [Mayor within three days after the date of such revocation] [Independent Hearing Officer within fifteen days of a permit being revoked. A hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”

**SECTION 29.** The “Food and Drink Vending Machine Ordinance,” ROA 1994, Chapter 9, Article 6, Part 6, Section 3 is amended as follows:

**“§ 9-6-6-3 OPERATOR’S PERMITS ISSUANCE, SUSPENSION, REVOCATION AND REINSTATEMENT.**

**(B) *Suspension or Revocation of Permit.***

**(1)** ~~[After an opportunity for a hearing, and following the procedures provided in § 9-6-6-5, an]~~ [An] operator's permit may be temporarily suspended [or revoked] by the Health Authority upon violation by the permit holder of any of the provisions of §§ 9-6-6-1 et seq.~~[or may be repeated] violation of such provisions.]~~”

**SECTION 30.** The “Albuquerque Weed and Anti-Litter Ordinance,” ROA 1994, Chapter 9, Article 8 is amended as follows:

**“§ 9-8-28 APPEAL PROCEDURE ADMINISTRATIVE HEARING.**

The owner may appeal the determination of the need for weed or litter removal to the City Hearing Officer by filing an appeal within ~~[seven calendar]~~ [fifteen] days of the date of service of the notice to remove. Such request shall be made in writing and filed in the Office of the City Clerk. The appeal shall ~~[identify the property and state the grounds for appeal together with all material facts in support thereof. A filing fee of \$50 shall accompany each appeal application. When a hearing is requested the Hearing Officer shall send written notice by certified mail, return receipt requested, to the owner of the time and place of the hearing. At the hearing the owner shall have the right to present evidence as to the alleged facts upon which the Mayor based the determination of the need for weed or litter removal and any other facts which may aid the Hearing Officer in determining whether this article has been violated. The Hearing Officer shall, following the hearing, issue a written decision. If the decision is that this article has been violated, the decision shall set forth the time within which removal shall be completed by the owner.]~~



~~This decision shall be served in the same manner as the Notice to Remove.] [be heard in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]~~

~~[§ 9-8-29 JUDICIAL REVIEW.~~

~~The exclusive remedy for parties dissatisfied with the action of the City Hearing Officer shall be the filing of a petition for a writ of certiorari with the State District Court. The petition for review shall be limited to the record made at the administrative hearing held pursuant to this article.]~~

~~§ 9-8-[29 30]~~

~~§ 9-8-[30 34]~~

~~§ 9-8-[31 32]"~~

SECTION 31. The "Noise Control Ordinance," ROA 1994, Chapter 9, Article 9 is amended as follows:

~~"§ 9-9-6 VARIANCES.~~

(C) Any person seeking a variance shall file a petition for variance ~~[and a \$50 filing fee with the Mayor.] [with the City Clerk's Office.] [The Mayor shall submit the petition to the Hearing Officer to conduct a public hearing] [The hearing shall be conducted]~~ after notice has been provided in accordance with this section and to make the final decision regarding the granting of the variance. The Hearing Officer shall conduct the hearing and accept documentary and testimonial evidence in accordance with accepted administrative hearing procedures.

~~§ 9-9-11 MAKING VIOLATIONS OF THE NOISE ORDINANCE CIVIL VIOLATIONS; PROVIDING A HEARING; ADDITIONAL REMEDIES; INJUNCTIONS.~~

(C) Any person who is issued a Notice of Violation may request that a hearing be scheduled by the city hearing officer by submitting a ~~[timely hearing request and paying a \$50 hearing fee to the Independent Office of Hearings. The hearing shall be conducted by a City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994). The hearing shall be held within 20 working days (excluding weekends and holidays) of receipt of the request unless the hearing is continued with the agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The City Hearing Officer shall determine whether a violation of this article occurred. The Hearing Officer shall mail a written notice of decision to the owner~~

~~within five working days of the hearing. If the Hearing Officer finds that there was no violation of this article, then the Hearing Officer shall (i) refund hearing fee and (ii) issue and date a Certificate of Compliance. If the Hearing Officer determines that a violation of this article did occur, then the Hearing Officer shall impose a fine as above prescribed.] [request for a hearing with the City Clerk's Office. The hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]~~"

SECTION 32. The "Municipal Solid Waste Ordinance," ROA 1994, Chapter 9, Article 10, Part 1, Section 11 is amended as follows:

**"§ 9-10-1-11 COLLECTION FEES.**

**(G) Discontinuance of Service; Hearing.**

(2) In order to discontinue service, a written notice shall be sent to the property owner giving the property owner at least 15 days notice of the termination of services and notice of property owner's right to protest the city's action at a hearing before the City Hearing Officer.

(3) The property owner must request in writing that a hearing be held and such request must be received by the [City Clerk within fifteen days of receipt of notice of termination of service. The hearing shall be held in accordance with the provisions in the IHO, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[City of Albuquerque Administrative Hearing Office on or before the date the services are to be terminated. A nonrefundable hearing fee of \$50.00 shall accompany each request for hearing by the City Hearing Officer filed pursuant to this section. At such hearing, the property owner and the Solid Waste Management Department may present evidence.]~~ The Hearing Officer may affirm, overrule, or modify the decision to terminate the services. The decision of the Hearing Officer shall be final. In the event a hearing is requested, the services shall not be terminated until and in accordance with the decision of the Hearing Officer.

~~[(4) The Mayor shall establish rules or procedures for such hearings and for discontinuance of service not in conflict herewith.]"~~

SECTION 33. The "Syringe Exchange Facility Location Ordinance," ROA 1994, Chapter 9, Article 15, Section 7 is amended as follows:

**"§ 9-15-7 PROCEDURE FOR APPROVAL OR DENIAL OF PERMIT.**

(A) Within 45 days of receipt of the application for a permit, the Mayor shall grant or deny the permit. If the Mayor affirmatively determines, upon inquiry and examination, that

the requirements of this article have been met, the Mayor shall grant the permit. If the Mayor determines, upon inquiry and examination, that any of the requirements of this article have not been met, the Mayor shall notify the applicant that the application for the permit has been denied and shall state the findings of fact upon which the denial is based. The denial shall not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing before the City Hearing Officer ~~[, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994).]~~

(B) ~~[A nonrefundable hearing fee of \$50.00 shall accompany each request for hearing by the Hearing Officer filed pursuant to this section.]~~ [ A request for a hearing shall be made by the applicant within fifteen days of receipt of notice of denial. The hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]

SECTION 34. “Angel’s Law,” ROA 1994, Chapter 9, Article 17 is amended as follows:

“§ 9-17-5 DANGEROUS DOG.

(B) Dangerous dog response.

(1) Seizure for attacks resulting in mortal injury. If the Department determines that a dog has mortally wounded a person or companion animal without provocation, the Department shall immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog or seize the dog with the consent of the owner. Such dog shall remain in the custody of the Department pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the owner does not request a hearing within ~~[ten calendar]~~ [fifteen] days, or if the Hearing Officer upholds the Department’s determination that the dog has mortally wounded a person or companion animal without provocation, such dog shall become the property of the Department and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance.

(2) Seizure for attacks which result in great bodily harm. If the Department determines that a dog has caused great bodily harm as defined herein, to either a person or companion animal without provocation, the Department shall immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog, or seize the dog with the consent of the owner. Such dog shall remain in the custody of the Department

pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the owner does not request a hearing within ~~[ten-calendar]~~ [fifteen] days, or if the Hearing Officer upholds the Department's determination that the dog has caused great bodily harm to a person or companion animal without provocation, then the Hearing Officer shall make a determination under the specific circumstances as to the disposition of the dog. The Hearing Officer shall rule that the dog will either, (1) become the property of the Department to be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance, or (2) that the dog be returned to its owner subject to, but not limited by, the restrictions for dangerous dogs contained herein.

(3) Potential seizure for attacks resulting in serious injury. If the Department determines that a dog has caused a serious injury, as defined herein, to a person or companion animal without provocation, then the Department may immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog or seize the dog with the consent of the owner. If seized, such dog shall remain in the custody of the Department pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the dog is seized by the Department and the owner does not request a hearing within ~~[ten-calendar]~~ [fifteen] days, such dog shall become the property of the Department and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the Hearing Officer upholds the Department's determination that the dog caused a serious injury upon a person or companion animal without provocation, the dog shall be deemed dangerous, and shall be subject to the terms and restrictions pertaining to a dangerous dog as contained herein.

(4) Subsequent attack by dangerous dogs. If a dog previously determined to be a dangerous dog commits a subsequent unprovoked attack on a person or companion animal, the Department shall immediately seek to obtain a warrant from a court of competent jurisdiction to seize the dog or seize the dog with the consent of the owner. Such dog shall remain in the custody of the Department pending adjudication and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance. If the owner does not request a hearing within ~~[ten-calendar]~~ [fifteen] days, or if the Hearing Officer upholds the Department's determination that the dog committed a

subsequent unprovoked attack after having previously been deemed dangerous, such dog shall become the property of the Department and shall be handled in the ordinary manner under the Humane and Ethical Animal Rules and Treatment Ordinance.

**§ 9-17-7 HEARINGS.**

~~[(A) ] Any person aggrieved by this article may file a Notice of Appeal on a form obtained from the Department or the City Clerk. The Notice of Appeal shall be filed with the City Clerk [ten calendar days including weekends and holidays from the date of the action appealed from. The Hearing Officer shall schedule and hold a hearing within 15 days from the date of the Notice of Appeal unless a continuance is sought and obtained from the Hearing Officer in which case the 15-day period shall be tolled. Exhaustion of administrative remedies is a predicate to any court action. No administrative remedy, remedial measure, seizure or other action by the Department is stayed on appeal except that any decision by the Department to humanely destroy a dog that is subject of an appeal under this article shall be stayed pending the outcome of the appeal.~~

~~(B) The Hearing Officer is in charge of the proceedings and may exclude any person for inappropriate conduct. The rules of evidence are relaxed. The appeal is administrative in nature. The Hearing Officer may consider and give appropriate weight to hearsay or any competent extraneous evidence relied upon by an ASO to take action under Angel's Law. The appellant dog owner must prove by a preponderance of the evidence that the state action is unreasonable or arbitrary and capricious. The Hearing Officer shall render a written decision served upon all interested parties within 15 days from the date the hearing is completed.~~

~~(C) Any owner appealing a notice of potentially dangerous dog or dangerous dog determination shall be entitled to request a hearing as described by this subsection. Such hearings shall be administrative in nature. The owner shall have the right to orally argue his or her case and to call witnesses and present evidence on his or her behalf. The owner is not entitled to confront any private person who reported the matter to the Department. The owner may appear with licensed attorney representation or may appear pro se. Within 15 calendar days of the conclusion of the hearing, the neutral hearing officer shall render a written decision supported by findings of fact and conclusions of law which shall be served upon all interested parties. In any hearing where the Department is seeking permanent possession of a dog, the owner shall also have the right to cross-examine any~~

~~witness called to testify by the Department or city at the hearing.~~

~~(D) Any person appealing the Department's determination that the person is an irresponsible owner shall be entitled to request a hearing as described by this section. Such persons must prove by clear and convincing evidence that they were in fact responsible at the time of the Department's order or that circumstances have changed such that the person is now able to humanely and responsibly own a dog in the city. The Hearing Officer shall render a written decision supported by findings of fact and conclusions of law served upon all interested parties within 15 days from the date the hearing is completed. The Hearing Officer may affirm, reverse or remand to the Department with written instructions.] [within fifteen days from the date of the aggrieving action. The hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”~~

SECTION 35. “Pigeon Nuisance Abatement,” ROA 1994, Chapter 9, Article 18, Section 3 is amended as follows:

“§ 9-18-3 MAKING THE FEEDING OF FERAL PIGEONS A CIVIL VIOLATION; PROVIDING A HEARING.

(F) Any person who is fined for violating this section may request a hearing by making a written request to the [Director. Upon receipt of a written request for a hearing, the Director shall set a date, time and place for the hearing no more than 60 days from the date of receipt of the request and provide notice to the requesting party of the date, time and place of the hearing. The Director may appoint a hearing officer to conduct the hearing and make recommendation to the Director. The Director may uphold, reduce or eliminate the fines based on the merits presented in the hearing.] [City Clerk within fifteen days of the notice of violation. The hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”

SECTION 36. The “Albuquerque Swimming Pool Ordinance,” ROA 1994, Chapter 10, Article 3, Part 5 is amended as follows:

**§ 10-3-5-1 TEMPORARY SUSPENSION OF PERMITS.**

Permits shall be temporarily suspended by the Enforcement Authority for failure of the holder to comply with the requirements of this article or other applicable laws, ordinances or regulations. Whenever a permit holder or operator has failed to comply with any of the requirements of this article, the permit holder or operator shall be notified in a writing

which identifies or references such condition; specifies the time period within which such condition shall be brought into compliance, if any period to cure is allowed; and states that failure to comply with any notice issued in accordance with the provisions of this article may result in immediate suspension of the permit. Notwithstanding the other provisions of this article, whenever the Enforcement Authority finds a condition in the operation of a swimming pool which constitutes an immediate hazard to the public health, welfare or safety, the Enforcement Authority may without prior warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition and stating that the permit is immediately suspended and that all swimming or bathing of any kind is to be immediately discontinued. An opportunity for an administrative hearing regarding such action will be provided if a written request for a hearing is delivered to the ~~[Enforcement Authority within five]~~ [City Clerk within fifteen] ~~[working]~~ days of suspension of the permit. Any person to whom notice of suspension is given shall comply immediately therewith. A sign, approved by the Enforcement Authority and in a location designated by the Enforcement Authority, shall be displayed stating that the pool is closed for use.

#### **§ 10-3-5-4 REVOCATION OF PERMIT.**

If serious or repeated violations of any of the requirements of this article occur, or if three or more suspensions occur which require reinspection for permit reinstatement within any 12-month period, or if the permit has been obtained through nondisclosure, misrepresentation or misstatement of a material fact, or if the owner or the person in charge interferes with the Enforcement Authority in the performance of his or her duties, then the permit may be revoked after an opportunity for a hearing has been provided by the Enforcement Authority. Prior to such revocation, the Enforcement Authority shall notify the permit holder in writing stating the reason the permit is subject to revocation and advising that the permit shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the ~~[Enforcement Authority]~~ [City Clerk] by the permit holder within ~~[such five-day period.]~~ [fifteen days.] A permit may be suspended pending revocation or pending the holding of an administrative hearing.

#### **§ 10-3-5-5 HEARINGS.**

~~[(A)]~~ The hearing ~~[provided for in this section]~~ shall be held ~~[within five working days of delivery of the permit holder's request for a hearing. Hearings shall be conducted by~~

~~the City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994), at a time and a place designated by the hearing officer and shall be recorded. All witnesses shall be sworn or affirmed. Written notice of the time and place of the hearing shall be mailed to the permit holder and the Enforcement Authority.~~

~~(B) The permit holder shall be afforded a fair hearing which provides the basic safeguards of due process, which shall include:~~

~~(1) The opportunity before the hearing to examine and to copy at the expense of the applicant all documents, records and regulations of the Enforcement Authority which are relative to the hearing. Any document not made available by the Enforcement Authority within a reasonable time after written request by the permit holder may not be relied on by the Enforcement Authority at the hearing.~~

~~(2) The right to be represented by counsel or other person chosen as his representative.~~

~~(3) The right to present evidence and arguments to controvert evidence relied on by the Enforcement Authority and to confront and cross-examine all witnesses on whose testimony or information the Enforcement Authority relies.~~

~~(4) A decision based solely and exclusively upon the facts presented at the hearing.~~

~~(C) The hearing officer may render a decision without proceeding with the hearing if the hearing officer determines that the issue has been decided previously in another proceeding which provided due process. If the permit holder or the Enforcement Authority fails to appear at a scheduled hearing, the hearing officer may postpone the hearing for a period of no more than five business days or may determine that the absent party has waived his right to a hearing. Both parties shall be notified of such determination.~~

~~(D) The hearing shall be conducted informally, but all persons present shall be orderly. Failure to comply with the directions of the hearing officer to obtain order may result in exclusion from the proceedings, or other appropriate action. Oral or documentary evidence pertinent to the facts and issues raised by the hearing may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.~~

~~(E) The hearing shall be recorded by audio method, but need not be transcribed unless a written transcript is requested, in which case the cost of written transcription shall be borne by the party requesting written transcription. If one party prefers to have~~



~~the hearing transcribed by a court reporter, the party shall pay all directly related costs, and the party requesting written transcription shall pay the cost of the written transcription.~~

~~(F) Based upon the record of such hearing, the hearing officer shall make a finding and shall sustain, modify or rescind any official notice which is the subject of the hearing.~~

~~(G) The hearing officer shall prepare a written report of his findings and decision within ten days after the hearing and shall provide copies to the parties.] [in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”~~

SECTION 37. The “Body Art Ordinance,” ROA 1994, Chapter 11, Article 5, Section 16 is amended as follows:

**“§ 11-5-16 SUSPENSION OR REVOCATION OF PERMITS.**

(B) If a permit holder fails to comply with any notice or request issued under the provisions of this article, the permit holder must be notified in writing ("written notice") that the permit is immediately suspended. The written notice must also contain a statement informing the permit holder that an opportunity for a hearing will be provided if a written request for a hearing is filed with the ~~[Department within 14 days.]~~ [City Clerk’s office within fifteen days from receipt of notice.]

(E) The Department may permanently revoke a permit following service of a notice of revocation unless a request for a hearing is filed with the ~~[Department by the permit holder within 14 days.]~~ [City Clerk’s office within fifteen days from receipt of notice.]

~~(F) The hearings provided for in this section shall be conducted by the [Department at a time and place designated by the Department. The hearing shall be scheduled no later than 120 days after mailing of a Notice of Revocation of a Permit. After hearing, the Department shall make a finding and may sustain, modify or rescind any official notice or order considered in the hearing. A written decision must be furnished to the permit holder by the Department.~~

~~(G) A nonrefundable hearing fee of \$50.00 shall accompany each request for a hearing conducted by the Department pursuant to this Section.] [Independent Hearing Officer in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”~~

SECTION 38. “Business Solicitations,” ROA 1994, Chapter 13, Article 3, Part 1 is amended as follows:

**“§ 13-3-1-11 AUTHORIZATION OR DENIAL OF PERMIT.**

The Mayor shall, within ten calendar days of receipt of the application for permit, grant or deny the permit. If the Mayor affirmatively determines, upon the basis of a review of the application, that the requirements have been met, he shall grant the permit. If the Mayor determines, upon the basis of a review of the application, that any of the requirements have not been met, the Mayor shall notify the applicant that the application for the permit has been denied and shall state the reasons upon which the denial is based. The denial of a permit may be appealed to a city Hearing Officer by filing a written notice of appeal with the City Clerk within ~~[ten]~~ [fifteen] days of the denial's issuance~~;~~ ~~the Hearing Officer shall, within 14 days of the filing of the notice of appeal, hold a hearing and recommend findings and action to the Mayor; the Mayor's final action shall be within five days of the receipt of the recommended findings and action].~~ [A hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]

**§ 13-3-1-98 VIOLATIONS; SUSPENSIONS AND REVOCATION OF PERMIT; HEARING.**

(A) If the Mayor believes that a person has:

(3) Conducted business solicitations in an unlawful manner or in such a way as to constitute a menace to the health or safety of the public; the Mayor shall give the permit holder written notice by certified mail, return receipt requested, that the Mayor intends to proceed to suspend or revoke the permit unless the permit holder requests a hearing. Such request shall be made in writing and filed in the office of the City Clerk within ~~[14 calendar]~~ [fifteen] days from the day that the permit holder receives the notice of the proposed action. The notice shall contain a statement of the facts upon which the Mayor has acted. A suspension of a permit shall not exceed 90 calendar days.

(C) When a hearing is requested pursuant to division (A) above, the ~~[Mayor shall send written notice by certified mail, return receipt requested, to the permit holder of the time and place of the hearing. The hearing shall be held no sooner than five calendar days nor later than 60 calendar days after the permit holder receives notice of the hearing unless the permit holder agrees to an extended time or the Mayor continues the hearing. At the hearing, the permit holder shall have the right to present evidence as to the alleged facts upon which the Mayor based the determination to suspend or revoke the permit and any other facts which may aid the Mayor in determining whether §§ 13-3-1-1 et seq. has been violated. If, after such hearing, the Mayor finds that any provision of §§ 13-3-1-1 et seq.~~

~~has been violated, he may suspend or revoke the permit and cause to be filed within ten calendar days after the hearing, in the office of the City Clerk for public inspection, and served upon the permit holder and all interested parties participating in the hearing, a written statement of the facts upon which such finding is based. If after such hearing, the Mayor finds that the ordinance has not been violated, he shall, within ten calendar days after the hearing, give to the permit holder a written statement that no violation was found to have been committed.] [hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”~~

SECTION 39. The “Old Town Solicitations Ordinance,” ROA 1994, Chapter 13, Article 3, Part 2 is amended as follows:

**“§ 13-3-2-11 PROCEDURE FOR AUTHORIZATION OR DENIAL OF PERMIT.**

The Mayor shall, within 45 calendar days of receipt of the application for permit, grant or deny the permit. If the Mayor affirmatively determines, upon inquiry and examination, that the requirements have been met, he shall grant the permit. If the Mayor determines, upon inquiry and examination, that any of the requirements have not been met, the Mayor shall notify the applicant that the application for the permit has been denied and shall state the findings of fact upon which the denial is based. The denial of a permit may be appealed to a City Hearing Officer by filing a written notice of appeal with the City Clerk within ~~[ten]~~ [fifteen] days of the denial's issuance; ~~the [Hearing Officer shall, within 14 days of the filing of the notice of appeal, hold a hearing and recommend findings and action to the Mayor; the Mayor's final action shall be within five days of the receipt of the recommended findings and action. A nonrefundable hearing fee of \$50.00 shall accompany each request for hearing by the City Hearing Officer that is filed pursuant to this Section.] [~~ hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]

**§ 13-3-2-98 VIOLATIONS; SUSPENSION AND REVOCATION OF PERMIT; HEARING.**

(A) If the Mayor has a reasonable suspicion that a vendor has:

(3) Conducted solicitations in an unlawful manner or in such a way as to constitute a menace to the health or safety of the public; or in a manner that is not conducive to the overall welfare and promotion of the Old Town HPO 5, the Mayor shall give the vendor written notice by certified mail, return receipt requested, that the Mayor intends to proceed to suspend or revoke the permit unless the vendor requests a hearing by a City Hearing

Officer. Such request shall be made in writing and filed in the office of the City Clerk within ~~[14-calendar]~~ [fifteen] days from the day that the vendor receives the notice of the proposed action. The notice shall contain a statement of the facts upon which the Mayor has acted. A suspension of a permit shall not exceed 90 calendar days.

(C) ~~When a hearing is requested pursuant to division (A) above, the [Hearing Officer shall send written notice by certified mail, return receipt requested, to the vendor of the time and place of the hearing. The hearing shall be held no sooner than five calendar days or later than 60 calendar days after the vendor receives notice of the hearing unless the vendor agrees to an extended time or the Hearing Officer continues the hearing. At the hearing the vendor shall have the right to present evidence as to the alleged facts upon which the Mayor based the determination to suspend or revoke the permit and any other facts which may aid the Hearing Officer in determining whether §§ 13-3-2-1 et seq. has been violated. If, after such hearing, the Hearing Officer finds that any provision of said sections have been violated, he may suspend or revoke the permit and cause to be filed, within ten calendar days after the hearing, in the office of the City Clerk for public inspection, and served upon the vendor and all interested parties participating in the hearing, a written statement of the facts upon which such finding is based. If such finding is based upon a failure to comply with the standards on handcrafted items, the permit shall be revoked and the permittee shall not be allowed to apply for a new permit. If, after such hearing, the Hearing Officer finds that any provision of §§ 13-3-2-1 et seq. has not been violated he shall, within ten calendar days after the hearing, give to the vendor a written statement that no violation was found to have been committed.] [hearing shall be held in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”~~

SECTION 40. “Advance Sale of Memberships,” ROA 1994, Chapter 13, Article 3, Part 3, Section 6 is amended as follows:

**“§ 13-3-3-6 DENIAL OR REVOCATION OF LICENSE-RIGHT OF HEARING.**

(B) The owner shall be given notice of such denial, suspension, or revocation in writing by personal service or certified mail, addressed to the place of business listed on the application. Such notice shall contain a statement of the reasons for and/or conditions of the denial, suspension, or revocation, the date when the denial, suspension, or revocation shall take effect, which shall not be less than ten working days from the date

the notice was mailed or served, and notify the permit holder that he may appeal the decision by filing with the [Mayor] [City Clerk] a written request for hearing, which [request] must be received by the ~~[Mayor on or before the effective date of such denial, suspension or revocation. All requests for hearings shall set forth briefly the objections to the Mayor's actions.]~~ [City Clerk within fifteen days of the notice of denial.]

(C) In the event a owner is preselling rights in a future establishment without a license and the Mayor has reasonable cause to believe the license is required, the Mayor shall notify the owner by personal service or certified mail to cease and desist. Such notice shall contain the effective date of such order, which shall not be less than ten working days from the date the notice was mailed or served, and notify the owner that he may appeal the decision by filing with the [Mayor] [City Clerk] a written request for hearing, which must be received by the ~~[Mayor on or before the effective date of the cease and desist order.]~~ [City Clerk within fifteen days of the notice of denial.]

(D) The hearing shall be conducted ~~[according to standard rules and procedures used in all such city hearings, and the decision of the Hearing Officer shall be final.]~~ [in accordance with the provisions in the Independent Hearing Office Ordinance §§2-7-8-1 et seq.]”

SECTION 41. The “Pawnbroker, Precious Material Dealer, Secondhand Retailer, and Automated Kiosk Ordinance,” ROA 1994, Chapter 13, Article 6, Section 10 is amended as follows:

“§ 13-6-10 NOTICE OF VIOLATION; NOTICE OF HEARING; HEARINGS; CONTINUANCE; ORDER; PENALTIES.

(A) Notice of violation. If a property unit enforcement official reasonably believes that a pawnbroker, precious material dealer, secondhand retailer, or automated kiosk has violated any one or more provisions of this article, such official shall serve written notice upon the same of the alleged violation (the "notice of violation"). The notice requirement is satisfied if personal service of same is had upon the pawnbroker, precious material dealer, secondhand retailer's designated agent or is posted in a conspicuous place upon the pawnbroker, precious material dealer, or secondhand retailer's place of business. A notice of violation issued to an automated kiosk must be electronically mailed to the automated kiosk's designated agent.

(1) The notice of violation shall specify the provisions of this article which have been allegedly violated, and shall set forth with reasonable clarity the factual basis for each alleged violation, and shall state that an administrative hearing will be conducted in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8. ~~[scheduled by the city and that a n]~~ [N]otice of the hearing will be mailed to the pawnbroker, precious material dealer, secondhand retailer's, or automated kiosk's place of business or address of record with the city by certified mail in accordance with this article.

(2) The property unit enforcement official shall provide the City Clerk with a copy of the notice of violation for transmission to the City Independent Office of Hearings within three business days of the notice of violation being served.

(B) Hearing and penalties relating to a notice of violation.

(1) Hearing. [The hearing will be conducted in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[Any person in receipt of a notice of violation, and any other interested person, may appear and produce evidence at any administrative hearing relating to a notice of violation. The final order of the city's administrative hearing officer on such matter constitutes the final administrative adjudication of the matter by the city.]~~

~~—— (a) Notice of hearing. Within three business days of its receipt of the notice of violation, the City Independent Office of Hearings shall mail a notice of the hearing to the pawnbroker, precious material dealer, secondhand retailer, or automated kiosk's designated agent and the property unit enforcement official who delivered the notice of violation, via certified mail. The notice shall specify the location of the hearing, a date and time for the hearing that is between 15 and 20 days from its mailing of the notice of hearing. Such notice shall briefly state the nature of the hearing and that failure to attend may result in an automatic fine.~~

~~—— (b) Continuance. A first continuance of the hearing may be ordered by the hearing officer assigned to hear the matter upon a showing of good cause by any party. Any subsequent continuance request may be granted only with the consent of all parties to the matter.~~

~~—— (c) Order. Within five days of the conclusion of the hearing, the hearing office~~

~~shall issue a final written order that identifies the penalties authorized by division (B)(2) below that are being imposed (if any) relating to the allegations from the notice of violation.]”~~

SECTION 42. “Professional Fundraisers,” ROA 1994, Chapter 13, Article 10, Section 9 is amended as follows:

“§ 13-10-9 DENIAL AND REVOCATION OF CERTIFICATE OF REGISTRATION; CEASE AND DESIST ORDER; APPEALS.

(A) If a professional fund raiser has made application for a license under this article and the Mayor has denied the license pursuant to § 13-10-4, the applicant may appeal the decision by filing with the [Mayor] [City Clerk] a written request for hearing setting forth reasons for the appeal. The hearing request must be received within [fifteen] [ten working] days of the notification of denial of the license.

(B) In the event that a professional fund raiser or one of his agents or employees with his knowledge or consent has failed to comply with any of the provisions of this article or other law, the Mayor may after opportunity for hearing, revoke or suspend the license. Notice shall be by personal service or certified mail to the president or legal designee thereof of the professional fund raiser at the address designated in the application. Such notice shall contain stated reasons for the revocation or suspension, an effective date not less than ten working days from the date the notice was personally served or received, and notify the professional fund raiser that he may appeal the decision by filing with the [Mayor] [City Clerk] a written request or hearing which must be received by the [Mayor on or before the effective date of the revocation or suspension,] [City Clerk within fifteen days from the receipt of the notice] and must set forth reasons for objecting to the order. [The hearing request must be received on or before the effective date of the order. A timely request for a hearing will suspend the effective date of the order.

(C) Any hearing held pursuant to divisions (A) and (B) above shall be held within 15 days of the request therefor, and be conducted by the City Hearing Officer. At the hearing, the representative of the professional fund raiser and any other interested persons, shall have the right to present evidence as to the facts relevant to decision on the appeal within ten working days of the hearing, and shall make written findings of fact in support of such decision.

~~(D) A nonrefundable hearing fee of \$50.00 shall accompany each request for hearing by the City Hearing Officer filed pursuant to this Section.]~~

~~[(C) A hearing shall be conducted in accordance with the provisions in the IHO Ordinance, Chapter 2, Article 7, Part 8.]”~~

SECTION 43. “Methadone Centers,” ROA 1994, Chapter 13, Article 11, Section 8 is amended as follows:

“§ 13-11-8 PROCEDURE FOR APPROVAL OR DENIAL OF PERMIT.

(A) Within 45 days of receipt of the application for a permit, the Mayor shall grant or deny the permit. If the Mayor affirmatively determines, upon inquiry and examination that the requirements of this article have been met, he shall grant the permit. If the Mayor determines, upon inquiry and examination, that any of the requirements of this article have not been met, the Mayor shall notify the applicant that the application for the permit has been denied and shall state the findings of fact upon which the denial is based. The denial shall not become effective for 20 days during which time the applicant may [within fifteen days from receipt of the denial,] petition for reconsideration [to the City Clerk] and shall be entitled to a hearing by the City Hearing Officer, as defined by the [Independent Office of Hearings] [IHO] Ordinance[ (~~§§ 2-7-8-1 et seq. ROA 1994~~) ] [, ROA 1994, Chapter 2, Article 7, Part 8]. The state shall be notified of any such hearing.”

SECTION 44. The “Sexually Oriented Business Ordinance,” ROA 1994, Chapter 13, Article 15, Section 14 is amended as follows:

“§ 13-15-14 APPEAL.

(A) Upon delivery of written notice of the denial, suspension, or revocation of a sexually oriented business license the applicant or licensee whose application for a license or license renewal has been denied or whose license has been suspended or revoked has the right to appeal. [Such an appeal must be received by the City Clerk’s office within fifteen days of receipt of notice of denial, suspension, or revocation.]

(B) An appeal shall be heard by a hearing officer ~~[under the authority of the city’s Independent Office of Hearings. The burden of proof shall be on the city to show that denial, suspension, or revocation is proper.~~

~~(C) The filing of an appeal under this section stays the action of the Mayor in suspending or revoking a license, or in denying renewal of a license that was valid on the date the application for renewal was submitted, until a final decision is made by the~~



~~hearing officer.~~

~~(D) The decision of the hearing officer is final and may be appealed to a court of competent jurisdiction.] [in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]”~~

SECTION 45. The “Uniform Housing Code,” ROA 1994, Chapter 14, Article 3, Part 5 is amended as follows:

**“§ 14-3-5-2 ADMINISTRATIVE HEARING PROCEDURE.**

~~[(A)]~~ The city shall designate ~~[a Hearing Officer]~~ [an Independent Hearing Officer] to provide for final interpretation of the provisions of this code and to hear appeals provided for herein. [Appeals shall be heard in accordance with the provisions in the IHO Ordinance, Chapter 2, Article 7, Part 8.]

~~[(B) The Hearing Officer shall meet the qualifications set forth in ROA § 2-7-8-3, or any subsequent city ordinance which generally sets forth the standard qualifications for administrative hearing officers or administrative law judges.]~~

**§ 14-3-5-3 NOTICES AND ORDERS OF THE DEPARTMENT.**

**(A) General.**

(2) Notice and Order. The Department shall issue a notice and order directed to the owner of the building, their agent and/or responsible party and where appropriate to the occupant of the building, as indicated by the county assessor's and the Department's records. The effective date of the order shall be eight days from the date of the notice. The notice and order shall contain:

(d) Statements advising:

1. That any person having any title or legal interest in the building may appeal from the notice and order or any action of the Department, excluding demolition, to the ~~[Office of Administrative Hearings]~~ [City Clerk's Office], provided the appeal is made in writing as provided in this code, and filed with the ~~[Office of Administrative Hearings]~~ [City Clerk's Office] within ~~[seven]~~ [fifteen] days of service of notice and order, and that failure to timely appeal the notice and order shall result in the order becoming effective;

2. That in the case of demolition the appeal procedure shall be as set forth in Section 3-18-5 NMSA 1978[, and the hearing shall be held in accordance with the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]

**§ 14-3-5-4 APPEAL.**

**~~[(1) Form of Appeal.~~**

**~~(a) Any person entitled to appeal under this code may do so by filing at the office of the City Clerk a written appeal containing:~~**

- ~~1. The names of all appellants participating in the appeal.~~**
- ~~2. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the appeal.~~**
- ~~3. A brief statement in ordinary and concise language of that specific order or action protested along with a copy of the order, notice, or action together with any material facts claimed to support the contentions of the appellant.~~**
- ~~4. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.~~**
- ~~5. The signatures of all parties named as appellants and their official mailing addresses.~~**
- ~~6. The verification, by declaration under penalty of perjury, of at least one appellant as to the truth of the matters stated in the appeal.~~**

**~~(b) The appeal shall be filed prior to the effective date of the order.~~**

**~~(2) Processing of Appeal. Upon receipt of any appeal filed pursuant to this section, the City Clerk or their staff shall file and stamp the appeal then deliver by mail or electronic means a copy of it to the party responsible for issuing the order, notice, or action under appeal as well as a copy to the Office of the City Attorney.~~**

**~~(3) Scheduling and Noticing Appeal for Hearing. The Office of Administrative Hearings shall schedule the hearing to a date and time not to exceed 15 business days from the date of the filing of the appeal. Written notice of the time and place of the hearing shall be given at least ten business days prior to the date of the hearing to each appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.]~~**

**[(A) Appeal. Any person entitled to an appeal under this code may do so by filing a written request with the City Clerk's office within fifteen days from the date of notice being appealed. A hearing shall be conducted by the Independent Hearing Officer in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]**

**[(4)] [(B)] Appeal of Council Action.** Any person aggrieved by the finding of the City Council that a building, structure or premise is so ruined, damaged and dilapidated that it is such a menace to the public comfort, health, peace or safety so as to require the removal from the municipality of the building, structure, ruins, rubbish, wreckage or debris, may file a written objection with the City Clerk within ten days of the receipt of a copy of the Resolution of Condemnation, asking for a hearing before the City Council. After receiving a valid written objection the City Council shall hold a hearing as provided for in Section 3-18-5, NMSA 1978.

**[(C) (B)] Effect of Failure to Appeal.** Failure of any person to file an appeal in accordance with the provisions herein shall constitute a waiver of [his their] right to an administrative hearing and adjudication of the notice and order or to any portion thereof.

**[(D) (C)] Scope of Hearing Appeal.** Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

**[(E) (D)] Staying of Order Under Appeal.** Enforcement of any notice and order of the Department issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

#### **§ 14-3-5-5 PROCEDURES FOR CONDUCT OF HEARING APPEALS.**

**[Appeals shall be heard in accordance with the provisions in the IHO Ordinance, Chapter 2, Article 7, Part 8.]**

**[(A) Form of Notice of Hearing.]** ~~The notice to appellant shall be substantially in the following form, but may include other information:~~

~~“You are hereby notified that a hearing will be held before the City of Albuquerque Office of Administrative Hearings at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you.”~~

**(B) Conduct of Hearings.**

**(1) Disclosure.** ~~The Hearing Officer may require that the parties provide, prior to the hearing, a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness' testimony, and copies of all documentary evidence to be introduced, which material shall be available for inspection~~

~~and copying by all parties.~~

~~(2) Evidence.~~

~~(a) The Hearing Officer shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded.~~

~~(b) The Hearing Officer may impose reasonable limits on the number of witnesses heard and on the nature and length of the testimony or questioning.~~

~~(c) Hearsay testimony is admissible subject to the other limitations on admissibility contained in these rules.~~

~~(d) The Hearing Officer shall base its decision on substantial evidence. The decision must be supported by at least some evidence which is admissible in a court of law.~~

~~(3) Hearing Procedure.~~

~~(a) The Hearing Officer shall preside over the hearing. The hearing shall be recorded by an audio recording device. The Hearing Officer shall swear in all witnesses who are anticipated to testify. The Hearing Officer may ask for opening and closing statements from the parties. The appellant shall proceed first with its case in chief, followed by the city-appellee unless otherwise ordered by the Hearing Officer. Rebuttal testimony may be entertained by the Hearing Officer.~~

~~(4) Decision. All decisions of the Hearing Officer shall be in writing, mailed or delivered by electronic means to all the parties to the appeal, and made within ten days of the close of the hearing unless otherwise so stipulated to by the parties. The Hearing Officer may affirm the decision of the city, reverse the decision of the city, or modify the decision of the city in a manner which is not arbitrary, capricious, contrary to law, or unsupported by substantial evidence.]~~

**§ 14-3-5-8 REQUESTED INSPECTIONS; FEE.**

**(C) A person may appeal the imposition of a re-inspection fee to the code [Office of Administrative Hearing] [in writing within fifteen days to the City Clerk's office].**

**§ 14-3-5-11 RESPONSIBILITIES OF OWNERS.**

**(D) An owner of a residential rental property who fails to comply with any provision of this subsection is responsible for a civil infraction and shall be assessed a civil penalty of \$500, plus an additional \$100 for each month after the date of the original violation until**

compliance occurs. The city shall serve notice of any assessed civil penalty upon the owner by mailing such notice to the address of record maintained by the County Clerk or otherwise known to the Department. Any person served with a notice may appeal such notice to the ~~[Office of Administrative Hearings]~~ [City Clerk] in writing within ~~[14]~~ [fifteen] days pursuant to the procedures contained in § 14-3-5-3.”

SECTION 46. The “Dilapidated Commercial Buildings and Properties Ordinance,” ROA 1994, Chapter 14, Article 20 is amended as follows:

**“§ 14-20-8 APPEAL.**

**(A) General.**

(3) Scheduling and noticing appeal for hearing. The Office of Administrative Hearings shall schedule the hearing [pursuant to the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[to a date and time not to exceed 15 business days from the date of the filing of the appeal. Written notice of the time and place of the hearing shall be given at least ten business days prior to the date of the hearing to each appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his or her address shown on the appeal.]~~

(B) Effect of failure to appeal. Failure of any person to file an appeal in accordance with the provisions herein shall constitute a waiver of his or her right to an administrative hearing and adjudication of the notice and order or to any portion thereof.

(C) Scope of hearing appeal. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

(D) Staying of order under appeal. Enforcement of any notice and order of the Department issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

**§ 14-20-9 PROCEDURES FOR CONDUCT OF HEARING APPEALS.**

[Procedures regarding the hearing shall be the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]

~~[(A) Form of notice of hearing. The notice to appellant shall be substantially in the following form, but may include other information:~~

~~"You are hereby notified that a hearing will be held before the City of Albuquerque Office of Administrative Hearings at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_,~~

~~20\_\_\_\_, at the hour of \_\_\_\_\_, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by legal counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you."~~

~~(B) Conduct of hearings.~~

~~(1) Disclosure. The Hearing Officer may require that the parties provide, prior to the hearing, a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness' testimony, and copies of all documentary evidence to be introduced, which material shall be available for inspection and copying by all parties.~~

~~(2) Evidence.~~

~~(a) The Hearing Officer shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded.~~

~~(b) The Hearing Officer may impose reasonable limits on the number of witnesses heard and on the nature and length of the testimony or questioning.~~

~~(c) Hearsay testimony is admissible subject to the other limitations on admissibility contained in these rules.~~

~~(d) The Hearing Officer shall base its decision on substantial evidence. The decision must be supported by at least some evidence which is admissible in a court of law.~~

~~(3) Hearing procedure. The Hearing Officer shall preside over the hearing. The hearing shall be recorded by an audio recording device. The Hearing Officer shall swear in all witnesses who are anticipated to testify. The Hearing Officer may ask for opening and closing statements from the parties. The appellant shall proceed first with its case in chief, followed by the city-appellee unless otherwise ordered by the Hearing Officer. Rebuttal testimony may be entertained by the Hearing Officer.~~

~~(4) Decision. All decisions of the Hearing Officer shall be in writing, mailed or delivered by electronic means to all the parties to the appeal, and made within ten days of the close of the hearing unless otherwise so stipulated to by the parties. The Hearing Officer may affirm the decision of the city, reverse the decision of the city, or modify the decision of the city in a manner which is not arbitrary, capricious, contrary to~~

~~law, or unsupported by substantial evidence.]”~~

SECTION 47. The “Solar Permit Ordinance,” ROA 1994, Chapter 14, Article 11 is amended as follows:

“§ 14-11-6 CREATION, LIMITATION OF SOLAR RIGHTS IN CITY.

(E) Termination or diminution of a solar right defined by a permit for solar rights which has been used shall be accomplished only by:

(2) Voidance of all or part of a permit for solar rights by the ~~[City hearing officer]~~ [Zoning Hearing Examiner], as specified in § 14-11-7, based on:

§ 14-11-7 PERMITS FOR SOLAR RIGHTS.

(B) *Hearing and Decision.*

(1) A duly filed application for a permit for solar rights shall be decided, upon the record after a hearing, by the ~~[City Hearing Officer]~~ [Zoning Hearing Examiner], ~~[as defined by the Independent Office of Hearings Ordinance (§§ 2-7-8-1 et seq. ROA 1994).]~~

(5) A written statement giving the name and address of the person making the appearance, signed by him or by his agent, and filed with the ~~[hearing officer]~~ [Zoning Hearing Examiner], constitutes appearance of record. The parties to a hearing shall be any of the following persons who has entered an appearance of record either prior to commencement of the hearing or when permitted by the ~~[hearing officer]~~ [Zoning Hearing Examiner]:

(a) A person entitled to notice under division (2) above; and

(b) Any unit of government which has jurisdiction over the site proposed for a permit.

(6) A party shall be afforded an opportunity to present evidence and argument and to question witnesses on all relevant issues, but the ~~[hearing officer]~~ [Zoning Hearing Examiner] may impose reasonable limitations on the number of witnesses heard, and on the nature and length of their testimony and questioning. The ~~[hearing officer]~~ [Zoning Hearing Examiner] may call witnesses and introduce papers on his own volition.

(7) The Mayor shall make a full record of the hearing by sound recording; any person shall have the opportunity to listen to, copy, or transcribe the recording at any reasonable time at the office of the Mayor. Summary minutes shall be kept of all ~~[hearing officer's]~~ [Zoning Hearing Examiner's] hearings, and they shall be kept available for public

inspection.

(8) Prior to making a decision, the ~~[hearing officer]~~ [Zoning Hearing Examiner] shall neither:

(a) Communicate, directly or indirectly, with any party or his representatives in connection with the merits of any issue involved except upon notice and opportunity for all parties to participate;

(b) Use nor rely upon any communication, reports, staff memoranda, or other materials prepared in connection with the particular case unless made a part of the record; nor

(c) Inspect the site with any party or his representative unless all parties are given an opportunity to be present.

(9) An advertised hearing may be continued to a time and place announced at the hearing without further mailed notice.

(10) The ~~[hearing officer]~~ [Zoning Hearing Examiner] shall act on an application within 15 days of the conclusion of the hearing. He shall prepare a written decision which includes the key findings of fact. This report shall be made part of the record. Each material finding shall be supported by substantial evidence or, if it is noted on the record, by a personal knowledge of or inspection of the hearing officer.

(11) The ~~[hearing officer]~~ [Zoning Hearing Examiner] shall, when approving a permit for solar rights, limit the solar rights spatially and temporally as necessary to meet the stated criteria for granting such permits.

(12) When any permit for solar rights is approved or denied, as provided in this division (12), written notification of the action, indicating the extent of the solar rights granted, shall be sent within one day of the action to the applicant's agent and all persons who were proposed for dominant and servient tenements by the applicant.

(C) Criteria for deciding requests for permits are as follows:

(1) A permit for solar rights shall be approved if and only if, in the circumstances of the particular case, the solar collector and related solar rights created will be beneficially used, and in addition the solar rights granted:

(a) Will not unreasonably interfere with the enjoyment of other sites, either the enjoyment of present use or prospective use as indicated by zoning or adopted plans; or

(b) Will be of more value to the public welfare than the precluded enjoyment of



present use or prospective use of other sites which would be precluded by the permit. For the purpose of this division (b), **PUBLIC WELFARE** means the conservation of scarce fuels and the allowance of an undertaking which would not otherwise be viable.

(2) The beneficial use of a solar right which would permit radiation from the sun to impinge directly on the solar collector before 9:00 a.m. or after 3:00 p.m., Mountain Standard Time, on a winter solstice day or before 9:00 a.m. or after 5:00 p.m., Mountain Daylight Savings Time, on a summer solstice day is *de minimus* and shall never be protected by a permit for solar rights. This division (2) shall not be construed to mean that an applicant has a right to a permit for solar rights at any other time of day.

(3) There is a rebuttable presumption that solar rights which do not limit the height of potential buildings more than the normally permissive height regulations of the Integrated Development Ordinance will not unreasonably interfere with the enjoyment of the other sites. This is true even though the solar rights inhibit the location of objects not limited by those height regulations.

(D) A permit for solar rights which is approved is voidable in whole or in part if and only if:

(1) Two years after the date approval vested, the rights and privileges in question have never been utilized; or

(2) The rights and privileges in question have ceased to be beneficially used for a continuous period of two years or more; or

(3) The owner of the solar right, i.e., the dominant tenement, requests that the permit be voided;

(4) A decision on whether to void a permit for solar rights shall be made by the [~~hearing officer~~] [Zoning Hearing Examiner], in a process consistent with division (B) of this section;

(5) If a permit for solar rights is voided, the related solar right is destroyed.

(E) The exclusive remedy for parties dissatisfied with the action of the [~~hearing officer~~] [Zoning Hearing Examiner] shall be filing of a Petition for Writ of *Certiorari*. The petition for review shall be limited to the record made on the public hearing held pursuant to this article.

#### **§ 14-11-8 RECORDING SOLAR RIGHTS.**

(C) The Mayor shall record with the County Clerk any permit for solar rights or

voidance of any permit for solar rights granted by the city. Filing shall be no sooner than 15 days after the ~~[hearing officer's]~~ [Zoning Hearing Examiner's] decision; filing shall be no later than 25 days after the hearing officer's decision unless a Writ of *Certiorari* has been filed and the Mayor has been so informed. The document filed shall be signed by the ~~[hearing officer]~~ [Zoning Hearing Examiner]; the document shall be titled "Solar Right Declaration" and shall contain at least the following:"

**SECTION 48.** Amend IDO text in Section 14-16-6-2(J) as follows:

**"ZONING HEARING EXAMINER.**

The Zoning Hearing Examiner (ZHE) conducts hearings and makes final decision on those types of applications shown as ZHE decision responsibilities in Table 6-1-1. [The ZHE shall hear applications for solar rights pursuant to the Solar Permits Ordinance, ROA 1994, §§ 14-11-1 et seq.] The ZHE shall have professional experience in both land use and law."

**SECTION 49. 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 provisions being declared unconstitutional or otherwise invalid.

**SECTION 50. COMPILATION.** The amendments set forth in SECTIONS 1 through 47 above shall amend, be incorporated in, and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994. The amendments set forth in SECTION 48 shall be incorporated into the 2022 IDO Annual Update.

**SECTION 51. EFFECTIVE DATE.** This ordinance shall take effect five (5) days after publication by title and general summary.