

CITY of ALBUQUERQUE

TWENTY SEVENTH COUNCIL

COUNCIL BILL NO. O-26-54 ENACTMENT NO. _____

SPONSORED BY: Tammy Fiebelkorn and Dan Champine

1 ORDINANCE

2 AMENDING ROA 1994, CHAPTER 2, ARTICLE 7, PART 2, RELATED TO THE
3 CITY ATTORNEY AND THE CITY LEGAL DEPARTMENT AND REPEALING
4 SECTION 3-2-5 OF THE CODE OF RESOLUTIONS.

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

7 SECTION 1. ROA 1994, Chapter 2, Article 7, Part 2 is hereby amended as
8 follows:

9 PART 2: LEGAL DEPARTMENT; CITY ATTORNEY

10 § 2-7-2-1 CREATION OF THE LEGAL DEPARTMENT; CITY ATTORNEY.

11 There is created a department of the city, the Legal Department. The
12 ~~[executive and administrative]~~ head of the Legal Department shall be the City
13 Attorney.

14 § 2-7-2-2 AUTHORITY AND DUTIES OF THE CITY ATTORNEY.

15 ~~[(A)]~~ The City Attorney, both personally and through ~~[his or her]~~ assistant
16 city attorneys, shall represent the [City of Albuquerque] ~~[city]~~ in the courts.

17 ~~[(B)]~~ ~~[He or she]~~ [The City Attorney, both personally and through assistant
18 city attorneys,] shall ~~[also]~~ advise the Mayor and the [City] Council as to legal
19 matters.

20 ~~[(C)]~~ The City Attorney and assistant city attorneys, while acting in the
21 course and scope of their duties, are prohibited from engaging in policy
22 advocacy relating to matters upon which the City Legal Department has or is
23 likely to be called upon for advisement or representation. Nothing herein shall
24 prohibit the City Attorney or assistant city attorneys from expressing their
25 personal views on any issue while acting outside the scope of their duties.

26 § 2-7-2-3 APPOINTMENT OF THE CITY ATTORNEY.

1 The City Attorney shall be appointed by the Mayor with the advice and
2 consent of the Council.

3 [§ 2-7-2-4 RELATIONSHIP BETWEEN THE CITY COUNCIL AND THE CITY
4 ATTORNEY AND LEGAL DEPARTMENT.

5 (A) It is the duty of the City Attorney, in addition to other duties
6 prescribed by law, City Charter, and City Ordinances, to attend all meetings of
7 the City Council, both regular and special.

8 (B) The City Attorney is the legal advisor of the City Council and shall
9 render advice on all legal questions affecting the city, whenever requested to
10 do so by the City Council. The City Council or individual Councilors may, at
11 their discretion, request privileged legal advice from other attorneys in the
12 Legal Department other than the City Attorney.

13 (C) It is the duty of the City Attorney to draft or review upon request of
14 the City Council, ordinances, resolutions, or acts creating rights covering any
15 subjects within the power of the city. The City Council or individual Councilors
16 may, at their discretion, request privileged drafting and review from other
17 attorneys in the Legal Department other than the City Attorney.

18 (D) All duties herein specified may be delegated by the City Attorney in
19 their discretion to qualified members of the Legal Department.

20 (E) Notwithstanding the provision of divisions (B) and (C) above, the
21 City Attorney shall decline to represent both the executive and the Council,
22 when the legal positions of the parties are in conflict. In such case, the parties
23 will obtain representation by other attorneys of their selection and the City
24 Attorney shall not participate in the legal case for either party.]

25 [(F) The City Attorney shall keep the City Council and its General
26 Counsel informed of the status of all legal matters involving the City. The City
27 Attorney shall provide legal updates no less than once each month and shall
28 provide timely written responses to update requests submitted by the
29 Council's General Counsel. Legal updates shall include information
30 concerning legal matters to the extent permitted by law and shall be presented
31 by the City Attorney together with deputy city attorneys and any other
32 attorneys requested by the City Council.

1 (G) In all litigation and other legal matters involving City Council action,
2 the City Attorney shall include the City Council's General Counsel, or their
3 designee, in communications, strategy discussions, decision-making, and the
4 review of filings, settlement proposals, and other legal documents. The City
5 Attorney shall provide the City Council's General Counsel, or their designee, a
6 meaningful opportunity to participate in the development of legal strategy and
7 offer legal advice throughout the course of the litigation or other legal matter.
8 Nothing in this section shall be construed to require the City Council's
9 General Counsel, or their designee, to enter appearance in litigation or to
10 direct, control, or manage litigation.

11 (H) The City Attorney shall ensure that the City Attorney, Legal
12 Department, and the Council's General Counsel communicate regularly and
13 effectively, coordinate legal services where appropriate, and maintain
14 sufficient legal coverage to provide responsive, high-quality legal
15 representation to the City Council.]

16 **§ 2-7-2-~~[4]~~[5] CITY COUNCIL PERFORMANCE REVIEW OF THE CITY**
17 **ATTORNEY.**

18 The City Council shall conduct a performance evaluation of the City
19 Attorney within 90 days following every 18~~[]~~month period of consecutive
20 service as City Attorney. The 18~~[]~~month period shall begin after the Council's
21 approval, the City Attorney's appointment~~[]~~ or after the prior performance
22 evaluation, whichever is more recent. The Council shall develop written
23 evaluation criteria for this purpose. The City Council shall present its findings
24 in a public written report to the Mayor and Chief Administrative Officer.

25 **§ 2-7-2-~~[5]~~[6] CONTRACTING WITH ATTORNEYS TO PROVIDE LEGAL**
26 **SERVICES.**

27 (A) It is the policy of the city to use attorneys who are city employees for
28 litigation unless there are special reasons for using contract attorneys. When
29 the City Attorney weighs whether outside legal counsel should be retained to
30 handle litigation, the City Attorney shall elect to hire or propose such outside
31 counsel only when:

32 (1) There is a conflict of interest within the Legal Department that
33 ethically requires outside counsel to be used;

1 (2) The city has no staff attorney with both the expertise and the time
2 available to handle the needed work; or

3 (3) When the city has an insurance policy in which the insurer reserves
4 the right to select defense counsel.

5 [(4) The litigation involves City Council action and the City Council has
6 requested outside counsel. The City Attorney shall not terminate
7 representation by such outside counsel without the Council's express
8 consent.]

9 (B) Contract attorneys paid by the city shall report to an overseeing
10 attorney who will evaluate and advise on the appropriateness of the litigation
11 strategy of the contract litigator and will also review and evaluate the billing
12 levels of the contract litigator.

13 (1) The overseeing attorney shall normally be the City Attorney or a
14 city staff attorney assigned by the City Attorney~~[,] [the]~~ [In cases in which the
15 City Attorney is unable to participate or represent the executive or City
16 Council due to a conflict, the City Attorney shall assign an associate city
17 attorney to serve as overseeing attorney for the executive and the City
18 Council's General Counsel shall serve as the overseeing attorney for the
19 Council.] ~~[The]~~ overseeing attorney shall not be a person overseeing the legal
20 case preparation for another party who may have separate interests from
21 those of the party represented by the contract attorney.

22 (2) If the estimated cost of securing the services of contract attorneys
23 for a case, to be established at the initiation of the legal work, exceeds
24 \$100,000, the City Attorney shall request the Director of the Office of Internal
25 Audit to retain a different contract attorney to review the work of the contract
26 litigator retained by the city. The contract attorney so retained shall advise and
27 consult with the overseeing attorney concerning [their] ~~[his or her]~~
28 conclusions.

29 (3) If the City Attorney believes that [they] ~~[he or she]~~ may be named
30 personally as a defendant in the suit in question or a related suit, or if [they]
31 ~~[he or she]~~ believe[s] that the Mayor, the Chief Administrative Officer, or a
32 Deputy or Assistant Chief Administrative Officer may be similarly named in the
33 litigation and they are personally implicated based on the specific facts of the

lawsuit, the City Attorney shall request the Director of the Office of Internal Audit to retain a different contract attorney to review the work of the contract litigator retained by the city. The contract attorney so retained shall advise and consult with the overseeing attorney concerning [their] ~~[his or her]~~ conclusions.

(4) If the overseeing attorney believes the contract litigator is not acting in the best interests of the city but when so advised the contract litigator elects not to alter [their] ~~[his or her]~~ approach, the overseeing attorney shall report this to the person who appointed [the overseeing attorney] ~~[him or her]~~. Such report by the overseeing attorney shall be at the conclusion of the litigation unless [the overseeing attorney] ~~[he/she]~~ feels the problem is one that must be immediately addressed by the city. Following receipt of such a report, the City Attorney shall share the concern with the Mayor and the President of the City Council~~[,]~~~~the~~ [The] Director of the Office of Internal Audit, after receipt of such report, shall share the report with the Accountability in Government Oversight Committee. For cases in which the city is the client, members of the City Council and authorized members of the City Council staff shall have unrestricted access to the overseeing attorney and the case record during the course of the legal work and after its conclusion.

(5) In cases for which it has been estimated that the cost of securing the services of contract attorneys exceeds \$100,000, the overseeing attorney shall forward for review all legal billings to the Risk Management Division of the Department of Finance and Management. Staff of the Risk Management Division shall work with the overseeing attorney to evaluate the reasonableness of billings and to control contract attorney costs.

(6) The above provisions of division (B) do not apply to defense of Workers' Compensation cases; in those cases, the City Risk Manager shall provide oversight of contract litigators' litigation strategy and billing levels.

SECTION 2. Section 3-2-5 of the Code of Resolutions, "Relationship Between the City Council and the City Attorney" is repealed in its entirety.

SECTION 3. SEVERABILITY. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or

1 unenforceable by any court of competent jurisdiction, such decision shall not
2 affect the validity of the remaining provisions of this Ordinance. The Council
3 hereby declares that it would have passed this Ordinance and each section,
4 paragraph, sentence, clause, word or phrase thereof irrespective of any
5 provision being declared unconstitutional or otherwise invalid.

6 SECTION 4. COMPILATION. "Section 1" of this Ordinance amends, is
7 incorporated in, and is to be compiled as part of the Revised Ordinances of
8 Albuquerque, New Mexico, 1994. "Section 2" of this Ordinance amends, is
9 incorporated in, and is to be compiled as part of the City of Albuquerque Code
10 of Resolutions.

11 SECTION 5. EFFECTIVE DATE. This Ordinance takes effect five days after
12 publication by title and general summary.

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