CITY OF ALBUQUERQUE

Office of the City Clerk
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May 18, 2012

I, Amy B. Bailey, City Clerk for the City of Albuquerque, New Mexico, a Municipal Corporation, hereby certify that the attached; Chapter 9: HEALTH, SAFTEY AND SANATATION; Article 5: AIR QUALITY AND ENVIRONMENTAL HEALTH CONTROL; is a true and correct copy of the original document which has been maintained by the office of the City Clerk and of which I am the custodian.

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Amy B. Bailey, City Clerk

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PART 1: AIR QUALITY CONTROL BOARD

§ 9-5-1-1 SHORT TITLE.

Sections 9-5-1-1 et seq. may be cited as the "Joint Air Quality Control Board Ordinance."
('74 Code, § 6-16-1) (Ord. 13-1975; Am. Ord. 65-1993)

§ 9-5-1-2 DEFINITIONS.

As provided in the New Mexico Air Quality Control Act, Sections 74-2-1 through 74-2-17 NMSA 1978 (hereinafter referred to as the "Air Quality Control Act"), the following definitions shall apply to terms used in §§ 9-5-1-1 et seq.

AIR CONTAMINANT. Any substance, including but not limited to any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, microorganisms, radioactive material, any combination thereof or any decay or reaction product thereof.

AIR POLLUTION. The emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

BOARD. The Albuquerque-Bernalillo County Air Quality Control Board created by §§ 9-5-1-1 et seq.

DEPARTMENT. The administrative agency of the Albuquerque-Bernalillo County Air Quality Control Board.

DIRECTOR. The administrative head of the Department or his or her authorized representative.

EMISSION LIMITATION and ***EMISSION STANDARD.*** A requirement established by the Board, the Department, or pursuant to the federal Act that limits the quantity, rate or concentration, or combination thereof, of emissions of air contaminants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

ENVIRONMENT DEPARTMENT. The Environment Department of the state.

FEDERAL ACT. The Federal Clean Air Act, 42 U.S.C. 7401 through 7642, its subsequent amendments and successor provisions.

FEDERAL STANDARD OF PERFORMANCE. Any standard of performance, emission limitation or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412.

HAZARDOUS AIR POLLUTANT. An air contaminant that has been classified as a hazardous air pollutant pursuant to the Federal Act.

MANDATORY CLASS I AREA. Any of the following areas in the state of New Mexico that were in existence on August 7, 1977:

(1) National wilderness areas that exceed 5,000 acres in size; and

(2) National parks that exceed 6,000 acres in size.

MAYOR. The Mayor or his or her authorized representative.

MODIFICATION. Any physical change in, or change in the method of operation of a source that results in an increase in the Potential Emission Rate of any Regulated Air Contaminant emitted by the source or that results in the emission of any Regulated Air Contaminant not previously emitted, but does not include:

(1) A change in ownership of the source;

(2) Routine maintenance, repair or replacement;

(3) Installation of air pollution control equipment and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the board or pursuant to the Federal Act; or

(4) Unless previously limited by enforceable permit conditions:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(b) An increase in the hours of operation; or

(c) Use of an alternative fuel or raw material if, prior to January 6, 1975, the source was capable of accommodating such fuel or raw material, or if use of an alternate fuel or raw material is caused by any natural gas curtailment or emergency allocation or any other lack of supply of natural gas.

NONATTAINMENT AREA. For any air contaminant, an area that is designated "nonattainment" with respect to that contaminant within the meaning of Section 107(d) of the Federal Act.

PERSON. An individual, partnership, corporation, association, the state or political subdivision of the state or any agency, department, or instrumentality of the United States and any of their officers, agents or employees.

PLAN. Any and all parts of the state implementation plant that pertain to the county that are adopted by the Board for submittal by the Governor of the state to the federal Environmental Protection Agency pursuant to 42 U.S.C. Section 7410.

POTENTIAL EMISSION RATE. The emission rate of a source at its maximum capacity in the absence of air pollution control equipment that is not vital to production of the normal product of the source or to its normal operation; also defined by Board regulations as "pre-controlled" emissions.

REGULATED AIR CONTAMINANT. Any air contaminant, the emission or ambient concentration of which is regulated pursuant to the Air Quality Control Act or the Federal Act.

SIGNIFICANT DETERIORATION. Any increase in the ambient concentrations of any air contaminant above the levels allowed by the Federal Act or Federal regulations for that air contaminant in the area within which the increase occurs.

SOURCE. Any structure, building, equipment, facility, installation or operation that emits or may emit any air contaminant.

STANDARD OF PERFORMANCE. A requirement of continuous emission reduction, including any requirement relating to operation or maintenance of a source to assure continuous emission reduction.

STATE IMPLEMENTATION PLAN. Any plan submitted by the Governor of the state of New Mexico to the federal Environmental Protection Agency pursuant to 42 U.S.C. Section 7410.
('74 Code, § 6-16-2) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-3 JOINT AIR QUALITY CONTROL BOARD.

(A) In accordance with the New Mexico Air Quality Control Act, a joint air quality control board known as the Albuquerque-Bernalillo County Air Quality Control Board is created. The Board shall serve as a joint local authority acting on behalf of both the city and the county. Within the exterior boundaries of the county, the Board shall have authority and jurisdiction to exercise the same functions pertaining to air quality as the functions that have been delegated by the Air Quality Control Act to the New Mexico Environmental Improvement Board except any functions reserved exclusively for the Environmental Improvement Board.

(B) The membership and organization of the Board shall be as described in this section.

(1) Members of the Board previously appointed and serving at the time §§ 9-5-1-1 et seq. are enacted shall continue serving their terms on the Board. The length and termination date of their terms of office shall not be affected by the passage of §§ 9-5-1-1 et seq.

(2) The Board shall consist of seven members, four of whom shall be appointed by the Mayor with the advice and consent of the City Council and three of whom shall be appointed by the County Commission.

(3) Members shall be appointed for three-year terms. No member shall serve more than two consecutive terms at a time. The positions on the Board shall be staggered appointments so no more than two city appointee's terms expire in any single year. Vacant positions shall be filled by individuals appointed by the same authority that appointed the outgoing member.

(4) Nominations and appointments to the Board shall be made as follows:

(a) At least a majority of the membership of the Board shall be individuals who represent the public interest and meet the requirements of the state and federal guidelines set

control the air contaminants involved.
('74 Code, § 6-16-4) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-5 DUTIES AND POWERS OF THE DEPARTMENT.

The Department shall:

(A) Administer and enforce the provisions of the Air Quality Control Act, §§ 9-5-1-1 et seq. and any regulations adopted pursuant thereto and any other laws relating to Air Pollution applicable within the city and the county. The staff for the Board shall be provided by the city. The Department shall perform, within the boundaries of the county, all functions delegated to the New Mexico Environment Department under the Act, except for the duties and powers reserved exclusively for the Environment Department.

(B) Develop facts and make investigations and studies consistent with the Air Quality Control Act and §§ 9-5-1-1 et seq., and in connection therewith, enter at all reasonable times in or upon any private or public property, except private residences, that the Department has reasonable cause to believe is or will become a source of air contaminants contributing to air pollution and require the production of information relating to emissions that cause or contribute to air pollution. The results of any such investigations shall be reduced to writing if any enforcement action is contemplated, and a copy thereof shall be furnished to the owner or occupant of the premises before the action is filed.

(C) Institute legal proceedings to compel compliance with the Air Quality Control Act, §§ 9-5-1-1 et seq., or any regulation of the Board.

(D) Encourage and make every reasonable effort to obtain voluntary cooperation by the owner or occupants to preserve, restore or improve air purity.

(E) Consult with any person proposing to construct, install or otherwise acquire an air contaminant source, device, system or control mechanism concerning the efficiency of the device, system, or mechanism or the air pollution problem that may be related to the source, device, system or mechanism, provided that consultation shall not relieve any Person from compliance with the Air Quality Control Act, §§ 9-5-1-1 et seq., regulations in force, pursuant thereto, or any other provision of law.

(F) Establish a small business stationary source technical and environmental compliance assistance program, consistent with the provisions of Section 507 of the Federal Act.

(G) Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government or from any person.

(H) Classify and record air contaminant sources that in its judgment, may cause or contribute to air pollution, according to levels and types of emissions and other characteristics that relate to air pollution, provided that classifications may be for application to the county as a whole or to any designated area of the city or county, and shall be made with special reference to the effects on health, economic and social factors and physical effects on property.

(I) Develop and present to the Board a Plan for the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the Department's responsibility as established by §§ 9-5-1-1 et seq.
('74 Code, § 6-16-5) (Ord. 65-1993)

§ 9-5-1-6 ADOPTION OF REGULATIONS; NOTICE AND HEARING.

(A) Any person may recommend or propose regulations to the Board for adoption. The Board shall determine whether to hold a hearing within 60 days of submission of a proposed regulation.

(B) No regulation or emission control requirement shall be adopted until after a public hearing by the Board. As used in this section, ***REGULATION*** includes any amendment or repeal thereof.

(C) Notice of hearing shall be given at least 30 days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulation or air quality standard. The notice shall be published in a newspaper of general circulation in the city and county. Reasonable effort shall be made to give notice to all persons who have made a written request to the Board for advance notice of its hearings.

(D) At the hearing, the Board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the Board.

(E) The Board may designate a hearing officer to take evidence in the hearing.

(F) No regulation or emission control requirement adopted by the Board shall become effective until 30 days after its filing under the State Rules Act, Sections 14-3-24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978.

(G) A copy of adopted air quality control regulations shall be on file in the office of the City Clerk and shall be available for inspection by the public during regular business hours. Copies of the regulations shall be available to any person upon request and payment of a reasonable charge set by the Mayor.
('74 Code, § 6-16-6) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-7 PERMITS; APPEALS; FEES.

(A) By regulation, the Board shall require:

(1) Any person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the Department prior to such construction or modification; and

(2) Any person intending to operate any source for which an operating permit is required pursuant to the 1990 amendments to the Federal Act, except as otherwise specifically provided by regulation, to obtain an operating permit from the Department.

(B) Regulations adopted by the Board shall include at least the following provisions:

(1) Requirements for the submission of relevant information, including but not limited to information the Department deems necessary to ensure that regulations and standards under §§ 9-5-1-1 et seq., the Air Quality Control Act or the Federal Act will not be violated.

(2) Specification of the deadlines for processing permit applications; provided, the deadline for a final decision by the Department on a construction permit application may not exceed:

(a) One hundred and eighty days after the application is determined to be complete, if the application is not affected by requirements for prevention of significant deterioration; or

(b) Two hundred and forty days after the application is determined to be complete, if the application is affected by requirements for prevention of significant deterioration;

(3) Specification of the public notice, comment period and public hearing, if any, required prior to the issuance of a permit, provided the permit regulations adopted include provisions requiring that notice be given to the New Mexico Environment Department of all applications by any source that emits, or has a Potential Emission Rate of 100 tons per year or more of any Regulated Air Contaminant, including any source of fugitive emissions of any Regulated Air Contaminant, at least 60 days prior to the date on which construction or major modification is to commence;

(4) A schedule of construction permit fees sufficient to cover:

(a) The reasonable costs of reviewing and acting upon any application for such permit; and

(b) The reasonable costs of implementing and enforcing the terms and conditions of the permit, excluding any court or other costs associated with an enforcement action.

(5) A schedule of emission fees consistent with the provisions of Section 502(b)(3) of the 1990 amendments to the Federal Act;

(6) Specification of the maximum length of time for which a permit shall be valid, provided that for an operating permit, such period may not exceed five years; and

(7) For an operating permit only:

(a) Provisions, consistent with Sections 502(b) and 505(b) of the Federal Act, that require:

1. Notice to and review and com-

ment by the United States Environmental Protection Agency (EPA); and

2. If the Department receives notice of objection from the United States Environmental Protection Agency before the operating permit is issued, the Department shall not issue the permit unless the permit is revised and issued pursuant to Section 505(c) of the Federal Act;

(b) Provisions governing renewal of the operating permit; and

(c) Specification of the conditions under which the operating permit may be terminated, modified or revoked and reissued prior to the expiration of the term of the operating permit.

(C) The Department may deny any application for:

(1) A construction permit if it appears that the construction or modification will not meet applicable requirements of §§ 9-5-1-1 et seq., the Air Quality Control Act, the federal Act or any regulation adopted pursuant thereto or

(2) An operating permit if:

(a) The source for which the permit is sought will emit a hazardous air pollutant or any air contaminant in excess of a federal standard of performance or a regulation of the Board;

(b) It appears that the source for which the permit is sought will cause or contribute to air contaminant levels in excess of any national, state or applicable local ambient air quality standard; or

(c) Any other provision of §§ 9-5-1-1 et seq. and the Air Quality Control Act or the Federal Act will be violated.

(D) The Department may specify conditions to any permit granted under this section, including:

(1) For a construction permit, a requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of §§ 9-5-1-1 et seq., the Air Quality Control Act, the Federal Act or any regulations promulgated pursuant thereto; and

(2) For an operating permit:

(a) Imposition of, individual emission limits, determined on a case-by-case basis, but only as restrictive as necessary to meet the requirements of the Air Quality Control Act and the Federal Act or the emission rate specified in the operating permit application, whichever is most stringent;

(b) Compliance with applicable federal standards of performance;

(c) Imposition of reasonable restrictions and limitations not relating to emission limits or emission rates; or

(d) Any combination of the conditions listed above.

(E) This section does not authorize the Department to require the use of machinery, devices or equipment from a particular manufacturer if the federal standards of performance, regulations of the Board and permit conditions may be met by machinery, devices or equipment otherwise available.

(F) The issuance of a construction or operating permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, §§ 9-5-1-1 et seq. or any applicable regulations of the Board. Any conditions placed upon a permit by the Department shall be enforceable to the same extent as a regulation of the Board.

(G) Any person who participated in a permitting action before the Department shall be notified by the Department of the action taken by the Department and the reasons for the action. Notification of the applicant shall be by certified mail.

(H) Any person who participated in a permitting action before the Department and who is adversely affected by such permitting action may file a petition for hearing before the Board. The petition shall be made in writing to the Board within 30 days from the date notice is given of the Department's action. Unless a timely request for hearing is made, the decision of the Department shall be final.

(I) If a timely petition for hearing is made, the Board shall hold a hearing within 90 days after receipt of the petition. The Board shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the hearing. If the subject of the petition is a permitting

action deemed by the Board to substantially affect the public interest, the Board shall ensure that the, public receives notice of the date, time and place of the hearing. The public in such circumstances shall also be given a reasonable opportunity to submit data, views or arguments orally or, in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

(J) The Board may designate a hearing officer to take evidence in the hearing. All hearings shall be recorded.

(K) The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, the Board shall sustain, modify or reverse the action of the Department.

(L) Notwithstanding any other provision of law, and subject to the provisions of Section 74-2-4 NMSA 1978, a final decision on a permit by the Department, the Board or the court of appeals that a new source will or will not meet applicable local, state and federal air pollution standards and regulations shall be conclusive and is binding on every city, county and state agency, and as an issue before any such agency shall be deemed resolved in accordance with that final decision.

(M) Fees collected pursuant to this section shall be deposited in a fund created pursuant, to Section 74-2-16 NMSA 1978 if collected pursuant to a permit regulation adopted by the Board pursuant to this section.
('74 Code, § 6-16-7) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-8 VARIANCES.

(A) The Board may grant an individual variance from the limitations prescribed under the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation of the Board, or any permit condition imposed by the Department whenever it is found, upon presentation of adequate proof:

(1) That compliance with any part of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation of the Board, or any permit condition will:

(a) Result in an arbitrary and unreasonable taking of property; or

(b) Impose an undue economic burden upon any lawful business, occupation or activity; and

(2) That the granting of the variance will not:

(a) Result in a condition injurious to health or safety; or

(b) Cause or contribute to an air contaminant level in excess of any primary national ambient air quality standard.

(B) No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public.

(C) Any variance or renewal thereof shall be granted within the requirements of Subsection A of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there are no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available;

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures that, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this division (2) shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to the timetable; or

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in divisions (1) and (2) of this division (C), it shall be for not more than one year.

(D) Any person seeking a variance shall do so by filing a petition for variance with the Director. The Director shall promptly investigate the petition and make a recommendation to the Board as to the

disposition of the petition.

(E) Upon receiving the recommendation of the Director on the variance, the Board shall:

(1) If the recommendation of the Director favors a variance, hold a public hearing prior to the granting of any variance; and

(2) If the Director is opposed to the granting of the variance, hold a hearing only upon the request of the petitioner.

(F) In the hearing, the burden on proof shall be upon the petitioner.
('74 Code, § 6-16-8) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-9 JUDICIAL REVIEW; ADMINISTRATIVE ACTIONS.

(A) Any person adversely affected by an administrative action taken by the Board or the Director may appeal to the Court of Appeals. All appeals shall be upon the record made at the hearing and shall be taken to the Court of Appeals within 30 days following the date of the action being appealed.

(B) For appeals of regulations, the date of the action shall be the date of the filing of the regulation by the Board pursuant to the State Rules Act, Sections 14-3-24, 14-3-25, 14-4-1 through 14-4-9 NMSA 1978.

(C) Upon appeal, the Court of Appeals shall set aside the action only if found to be:

(1) Arbitrary, capricious or an abuse of discretion;

(2) Not supported by substantial evidence in the record; or

(3) Otherwise not in accordance with law.

(D) After a hearing and a showing of good cause by the appellant, a stay of the action being appealed may be granted:

(1) By the Board or the Director, whichever took the action being appealed; or

(2) By the Court of Appeals if the Board or the Director denies a stay or fails to act upon an application for a stay within 60 days after receipt of the application.
('74 Code, § 6-16-9) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-10 EMERGENCY POWERS OF THE DIRECTOR.

(A) Notwithstanding any other provision of the Air Quality Control Act, §§ 9-5-1-1 et seq., or any regulation of the Board, if the Director of the Department determines that a source or combination of sources presents an imminent and substantial endangerment to the public health or welfare or to the environment, the Director may bring suit in the District Court for the county to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution or to take such other action as may be necessary.

(B) If it is not practicable to assure prompt protection of the public health or welfare or the environment by commencement of a civil action, the Director may issue orders necessary to protect the public health or welfare or the environment. An order shall be effective for a period of not more than 24 hours, unless the Director brings a civil action before the expiration of the 24 hours. If the Director brings an action within that time, the order shall be effective thereafter for 48 hours or for such longer period as may be authorized by the court pending litigation.
('74 Code, § 6-16-10) (Ord. 13-1975; Am Ord. 65-1993)

§ 9-5-1-11 CONFIDENTIAL INFORMATION.

(A) Any records, reports or information obtained under the Air Quality Control Act or §§ 9-5-1-1 et seq. by the Board or the Department shall be available to the public, except that upon a satisfactory showing by any person to the Director or the Board that records, reports or information, except emission data, or particular parts thereof, to which the Director or the Board has access under the Air Quality Control Act, if made public would divulge confidential business records or methods or processes entitled to protection as trade secrets of that person, the Director or the Board, as applicable, shall consider such record, report or information, or particular portion thereof, confidential in accordance with the provisions of Section 14-2-1 NMSA 1978 and 18 U.S.C. Section 1905, except that such record, report or other

information may be disclosed:

(1) To other officers, employees or authorized representatives of the Department or the Board concerned with carrying out the Air Quality Control Act;

(2) To officers, employees or authorized representatives of the United States Environmental Protection Agency concerned with carrying out the Federal Act; or

(3) When relevant, in any proceeding under the Air Quality Control Act or the Federal Act.

(B) The Board shall adopt regulations to implement this section, including regulations specifying those business records entitled to treatment as confidential records.
('74 Code, § 6-16-11) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-12 LIMITATIONS ON REGULATIONS.

Sections 9-5-1-1 et seq. do not:

(A) Authorize the Board to make any regulation with respect to any condition or quality of the outdoor astmosphere if the condition or air quality level and its effect are confined entirely within the boundaries of the industrial or manufacturing property within which the air contaminants are or may be emitted and public access is restricted within such boundaries.

(B) Grant to the Board any jurisdiction or authority affecting the relation between employers and employees with respect to or arising out of any condition of air quality; or

(C) Supersede or limit the applicability of any law relating to industrial health, safety or sanitation.
('74 Code, § 6-16-12) (Ord. 13-1975; Am. Ord. 45-1984; Am. Ord. 65-1993)

§ 9-5-1-13 LOCAL AIR QUALITY PERMIT FUND ESTABLISHED.

(A) Pursuant to Section 74-2-16 NMSA 1978 and §§ 9-5-1-1 et seq., an Environmental Health Department air quality permit fund is established.

(B) All fees collected by the Department shall be deposited in the fund created in division (A) above, and shall be used by the city only for the purpose of paying the reasonable costs of funding the department's performance of the following permitting functions required by the Federal Clean Air Act Amendments of 1990 as follows:

(1) Reviewing and acting upon any application for a permit;

(2) If the owner or operator receives a permit, implementing and enforcing the terms and conditions of such permit, not including any court costs or other costs associated with any enforcement action;

(3) Emissions and ambient monitoring;

(4) Preparing generally applicable regulations or guidance;

(5) Modeling, analysis and demonstration; and

(6) Preparing inventories and tracking emissions.
('74 Code, § 6-16-18) (Ord. 65-1993)

§ 9-5-1-14 INSPECTION.

The Director or an authorized representative, upon presentation of Departmental credentials:

(A) Shall have a right of entry to, upon or through any premises on which an emission source is located or on which any records required to be maintained by regulations of the Board or by any permit condition are located; and

(B) May at reasonable times:

(1) Have access to and copy any records required to be established and maintained by regulations of the Board or any permit condition; and

(2) Inspect any monitoring equipment and method required by regulations of the Board or by any permit condition; and

(3) Sample any emissions that are required to be sampled pursuant to regulation of the Board or any permit condition.

(C) If premises described in divisions (A) or (B) above are unoccupied, a Department employee shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and demand entry.

(D) If entry is refused, the Mayor shall proceed to obtain a search warrant by filing the documents and following the procedures required by the Metropolitan Court or District Court. The sworn statement filed in conjunction with the application for the search warrant or order shall:

(1) Set forth the particular premises, or portion thereof, sought to be inspected;

(2) State that the owner or occupant of the premises or portion thereof, has refused entry;

(3) State that inspection of the premises or portion thereof is necessary to determine whether it complies with the requirements of §§ 9-5-1-1 et seq.;

(4) Set forth the particular provisions of §§ 9-5-1-1 et seq. sought to be enforced;

(5) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular condition exists in the premises, or portion thereof, which constitutes a violation of §§ 9-5-1-1 et seq.; and

(6) State that the Mayor or the Mayor's designated representative is authorized by the city to make the inspection.
('74 Code, § 6-16-15) (Ord. 13-1975; Am. Ord. 15-1983; Am. Ord. 65-1993)

§ 9-5-1-15 REPRESENTATION OF THE DEPARTMENT, THE CITY AND THE COUNTY.

In any court action to enforce the provisions of the Air Quality Control Act, §§ 9-5-1-1 et seq. or any regulation, permit condition or emergency order adopted, imposed or issued pursuant thereto:

(A) The city and the Department shall be represented by the City Attorney; and

(B) The County or City Attorney shall be represented by the District Attorney.
('74 Code, § 6-16-14B) (Ord. 65-1993)

§ 9-5-1-98 VIOLATIONS; COMPLIANCE ORDERS; FIELD CITATIONS.

(A) Whenever, on the basis of any information, the Mayor determines that any person has violated or is violating any requirement, or prohibition of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation promulgated pursuant to §§ 9-5-1-1 et seq., or any condition of a permit issued pursuant thereto, the Mayor may:

(1) Issue a compliance order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) Commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

(B) Any order issued pursuant to division (A) above may include a suspension or revocation of any permit, or portion thereof, issued by the Mayor. Any penalty assessed in the order shall not exceed $15,000 per day of noncompliance for each violation.

(C) Any order issued pursuant to division (A) above shall become final unless, no later than 30 days after the order is served, the person named therein submits a written request to the Director for a public hearing. Upon such request, the Director shall promptly conduct a public hearing. The Director shall appoint an independent hearing officer to preside over the public hearing. The hearing officer shall make and preserve a complete record of the proceedings and forward the hearing officer's recommendation based thereon to the Director, who shall make the final decision.

(D) The Board may adopt a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $1,000 per day of violation may be issued by officers or employees of the Department as designated by the Mayor. The program will be implemented by the Department.

(E) Any person to whom a field citation is issued pursuant to division (D) above may, within a reasonable time as prescribed by regulation by the Board, elect to pay the penalty assessment or to request a hearing by the issuing agency on the field

citation. If a request for hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final.

(F) Payment of a civil penalty required by a field citation issued pursuant to division (D) above shall not be a defense to further enforcement by the Department to correct a violation or to assess the maximum statutory penalty pursuant to other authorities in the Air Quality Control Act or §§ 9-5-1-1 et seq. if the violation continues.

(G) In determining the amount of any penalty to be assessed pursuant to this section, the Director or the individual issuing a field citation shall take into account the seriousness of the violation, any good-faith efforts to comply with the applicable requirements and other relevant factors.

(H) In connection with any proceeding under this section, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

(I) Penalties collected pursuant to an administrative order or a field citation shall be deposited in the city or the county general fund, as applicable.
('74 Code, § 6-16-13) (Ord. 65-1993)

§ 9-5-1-99 PENALTY.

(A) *Civil Penalty.* Any person who violates any provision of the Air Quality Control Act, §§ 9-5-1-1 et seq., any regulation of the Board or any permit condition or emergency order adopted or issued pursuant to the Air Quality Control Act or §§ 9-5-1-1 et seq. may be assessed a civil penalty not to exceed $15,000 for each day during any portion of which a violation occurs.

(B) *Criminal Penalties.*

(1) Any person who knowingly commits any violation of §§ 9-5-1-1 et seq. or a regulation of the Board which is not described as a felony in Section 74-2-14.C or 74-2-14.D NMSA 1978 is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

(2) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the Air Quality Control Act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method to be maintained under the Air Quality Control Act or §§ 9-5-1-1 et seq. or regulation adopted pursuant thereto is guilty of a petty misdemeanor and shall, upon conviction, be punished by a fine of not more than $10,000, per day for each violation, or by imprisonment for not more than six months, or by both.
('74 Code, §§ 6-16-14A; 6-16-17) (Ord. 65-1993; Am. Ord. 23-1996)

PART 2: AIR POLLUTION TRAFFIC CONTROL

§ 9-5-2-1 SHORT TITLE.

Sections 9-5-2-1 et seq. may be cited as the "Air Pollution Traffic Control Ordinance."
('74 Code, § 6-21-1) (Ord. 11-1975)
Cross-reference:
Traffic code, see Chapter 8

§ 9-5-2-2 DEFINITIONS.

For the purpose of §§ 9-5-2-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DIRECTOR. The Director of the Department of Environmental Health of the city.

EMERGENCY VEHICLE. Any motor vehicle of the Fire Department, state or local police or sheriff's department, any ambulance and any motor vehicle of any federal, state or local governmental body or any public service corporation provided that such vehicle is properly designated and operated as an emergency vehicle in accordance with applicable laws and regulations pertaining to emergency vehicles.

ENTRANCE RAMP. A public thoroughfare on which traffic is limited to one-way traffic entering onto any interstate highway.

EXIT RAMP. A public thoroughfare on which traffic is limited to one-way traffic exiting from any interstate highway.

INTERSTATE HIGHWAY. Any limited access highway which is a part of the Federal Interstate Highway System.

MAYOR. The Mayor or his designated representative.

MOTOR VEHICLE. Any vehicle propelled by an internal combustion engine fueled by gasoline, diesel fuel, or other petroleum product.

PUBLIC THOROUGHFARE. Any street, alley, ramp, road, or highway within the city limits constructed and maintained by any governmental body and open to the public for the operation of motor vehicles.

WARNING LEVEL READING. A reading obtained by the Department of Environmental Health from air sampling equipment at any official monitoring site within the City which indicates either or both of the following conditions:

(1) A level of carbon monoxide (CO) which equals or exceeds 22 parts per million (ppm) for an eight-hour average or 50 parts per million (ppm) for a one-hour average; or

(2) A level of ozone (O_3) which equals or exceeds 0.4 parts per million (ppm) for a one-hour average.
('74 Code, § 6-21-2) (Ord. 11-1975)

§ 9-5-2-3 PURPOSE.

The purpose of §§ 9-5-2-1 et seq. is to protect the public health by providing a mechanism for the reduction of motor vehicle traffic during periods of high air pollution episodes, to which motor vehicle traffic is a major contributor. Sections 9-5-2-1 et seq. serve to implement certain portions or recommendations of the Transportation Control Plan for the Albuquerque Mid-Rio Grande Air Quality Control Region, December, 1973.
('74 Code, § 6-21-3) (Ord. 11-1975)

§ 9-5-2-4 AIR POLLUTION STATUS REPORT AND TRAFFIC CONTROL RECOMMENDATION.

(A) Whenever a warning level reading is obtained for carbon monoxide (CO) or ozone (O_3) at any air pollution monitoring site maintained within the city limits by the Department of Environmental Health and meteorological conditions are such that pollutant considerations can be expected to remain at the above levels for 12 or more hours or increase unless control actions are taken, the Director shall submit to the Mayor an Air Pollution Status Report and Traffic Control Recommendation.

(B) The Air Pollution Status Report and Traffic Control Recommendation shall include, but not be limited to:

(1) Information on current status of air pollution in the city;

(2) Pollution conditions expected during the next 72 hours;

(3) The nature of the present and expected threat to public health resulting from such present and expected conditions;

(4) Identification of any specific areas of the city where pollution conditions and the threat to public health are of special concern;

(5) A statement of the extent to which motor vehicle traffic is a contributing factor to present and expected pollution conditions;

(6) A statement of the extent to which traffic control measures can be expected to reduce pollution;

(7) Any other information relevant to the current and expected threat to public health and the relationship of traffic control measures thereto; and

(8) A recommendation as to specific traffic control measures to be imposed to reduce pollution in the city or within any specified area of the city.

(C) The Director shall confer with the Traffic Engineer and the Chief of Police in the formulation of specific traffic control measures recommended in the Air Pollution Status Report and Traffic Control Recommendation or any revision thereof.

(D) The Air Pollution Status Report and Traffic Control Recommendation shall be revised every 24 hours or more frequent intervals whenever the Director determines that present or expected conditions have significantly changed or any traffic control measure previously recommended or placed in effect is in need of revision.
('74 Code, § 6-21-4) (Ord. 11-1975)

§ 9-5-2-5 TRAFFIC CONTROL ORDER.

(A) Upon receipt of an Air Pollution Status Report and Traffic Control Recommendation from the Director, the Mayor shall determine what, if any, public thoroughfares should be closed to motor vehicle traffic in order to reduce air pollution, and the resulting threat to public health, and shall issue an appropriate traffic control order to the Chief of Police. The traffic control order shall specify the public thoroughfares, or portions thereof, to be closed to motor vehicle traffic until further notice.

(B) The traffic control order shall specify such exceptions to any closure or any public thoroughfare as the Mayor shall deem appropriate in the public interest; provided, however, that the following exceptions shall apply to any traffic control order issued under the authority of §§ 9-5-2-1 et seq.:

(1) Emergency vehicles;

(2) Vehicles operated by or on behalf of bona fide residents of an area served by the public thoroughfare subject to closure when alternate routes of travel to and from places of residence are not available; and

(3) Buses operated by or for the Department of Transportation;

(4) Vehicles of the United States Military or New Mexico National Guard; or

(5) U.S. Government motor vehicles.

(C) No interstate highway nor any entrance ramp to any interstate highway shall be closed under the authority of §§ 9-5-2-1 et seq. Any traffic control order of the Mayor issued under the authority of §§ 9-5-2-1 et seq. which orders the closing of any exit ramp of any interstate highway shall also provide for the giving of notice of such exit ramp closure at or near appropriate entrance ramps, by signs or other appropriate means, to operators of motor vehicles preparing to use such interstate highway.

(D) Upon issuance of any traffic control order to the Chief of Police, the Mayor shall at the same time cause the contents thereof to be released to the public, using to the maximum extent practicable, all available press, radio, and television media.

(E) Any traffic control order issued under the authority of §§ 9-5-2-1 et seq. shall be cancelled or modified from time to time as the Mayor shall determine appropriate, upon advice from the Director or as the Mayor may deem expedient by the issuance of revised orders in the manner prescribed herein for the issuance of traffic control orders. Orders cancelling or modifying traffic control orders shall be issued and publicized in the manner described in division (D) above.
('74 Code, § 6-21-5) (Ord. 11-1975)

§ 9-5-2-6 EXECUTION OF TRAFFIC CONTROL ORDER.

The Chief of Police shall cause any traffic control order issued under the authority of §§ 9-5-2-1 et seq. to be executed in accordance with its terms and shall keep the Mayor currently informed concerning all matters relating to execution of such orders.
('74 Code, § 6-21-6) (Ord. 11-1975)

§ 9-5-2-99 PENALTY.

Any person convicted of resisting or failing to obey any order of any police officer issued in the proper execution of a Traffic Control Order issued under the authority of §§ 9-5-2-1 et seq., or of interfering with the performance of duty by any officer under the authority of such order, or of failing to heed or obey any sign or other traffic control device authorized by such order shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances.
('74 Code, § 6-21-7) (Ord. 11-1975)

PART 3: CHLOROFLUOROCARBONS

§ 9-5-3-1 FINDINGS.

The city finds that:

(A) Chlorofluorocarbons, commonly called CFCs, when discharged into the environment deplete the earth's protective ozone layer and allow increased amounts of ultraviolet radiation to penetrate the atmosphere, thereby posing long-term danger to human health and the environment by increasing such harms as skin cancers, suppression of the immune

system, and damage to crops and aquatic life.

(B) CFCs are widely used in refrigeration and air conditioning systems in a form commonly known as "Freon" and currently no economically feasible technology is available as a substitute for Freon in these systems;

(C) The recapturing and recycling of Freon from auto air conditioning units alone could eliminate nearly 20% of all CFCs used nationally and could avoid an equivalent amount of Freon escaping into the atmosphere.

(D) That the release of CFCs into the atmosphere is a global danger, and any reduction in the release of these chemicals will promote the health, safety, and welfare of the citizens of Albuquerque.
('74 Code, § 6-20-1) (Ord. 83-1989)

§ 9-5-3-2 SHORT TITLE.

§§ 9-5-3-1 et seq. may be cited as the "Chlorofluorocarbons Ordinance."
('74 Code, § 6-20-2) (Ord. 83-1989)

§ 9-5-3-3 DEFINITIONS.

For the purpose of §§ 9-5-3-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHLOROFLUOROCARBONS or ***CFCs.*** The family of substances containing carbon, fluorine and chlorine, and having no hydrogen atoms and no double bonds, for example, the Freon used in air conditioning and refrigeration units.

DISPOSE. To discard and not reuse.

PERSON. A natural person, governmental agency, partnership or corporation, whether acting as a principal, agent, employee or otherwise.

RECYCLING SYSTEM. A system by which refrigerant is pumped out of the compressor of a cooling or freezing system, purified, and reinjected into the same or another cooling or freezing system.

REFRIGERATION UNIT. Refrigerators and freezers, including both those intended to be household appliances and those which are commercial and industrial models.

SELL. To offer for sale, expose for sale, have in possession for sale and distribution, whether or not the sale or distribution is made for consideration.

WRECKER OF VEHICLES. Every person actively engaged in the business of acquiring vehicles, required to be registered under the Motor Vehicle Code, Chapter 66, Articles 1 through 8 NMSA 1978 for the purpose of dismantling such vehicles as scrap material or for the resale of reclaimable parts.
('74 Code, § 6-20-3) (Ord. 83-1989)

§ 9-5-3-4 AUTOMOTIVE AIR CONDITIONING SYSTEMS.

(A) No person shall, within the city, sell CFCs which can be used as a coolant in an automotive air conditioning system to any person who does not possess and provide evidence of possession and operation of a recycling system.

(B) Auto repair shops and other persons who repair or service automotive air conditioning systems within the city shall capture any CFCs released from automotive air conditioning systems by utilizing a recycling system.

(C) Wreckers of vehicles shall capture all the CFCs in any automotive air conditioning system which they propose to dismantle within the city by utilizing a recycling system.
('74 Code, § 6-20-4) (Ord. 83-1989)

§ 9-5-3-5 REFRIGERATION UNITS.

(A) Effective March 1, 1990, the city landfill will no longer accept refrigeration units.

(B) Effective no later than March 1, 1990, the city will accept without charge or arrange for some other person to so accept all refrigeration units which have been used in the city and which the owners wish to dispose of. These units will be recycled by the city or in programs approved by the city, whereby the CFCs will be recaptured and recycled.

(C) The Mayor shall develop a sound program to implement the provisions of this section, including appropriate education programs.

(D) This section shall not apply to study and/or research on the effects of the release of CFCs into the environment and/or the development of alternative technologies.
('74 Code, § 6-20-5) (Ord. 83-1989)

§ 9-5-3-6 INDUSTRIAL USE OF CHLORO-FLUOROCARBONS.

(A) Effective March 1, 1990 industrial use must be accompanied by a policy and a system in force to capture CFCs in a comprehensive recycling program. This includes products sold and used in Albuquerque that use CFCs, not otherwise addressed by §§ 9-5-3-1 et seq.
('74 Code, § 6-20-6) (Ord. 83-1989)

§ 9-5-3-99 PENALTY.

Any person who violates any provision of §§ 9-5-3-1 et seq. shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances. Each violation and each day's violation shall constitute a separate violation and shall be punishable as such. ('74 Code, § 6-20-7) (Ord. 83-1989)

PART 4: WOODBURNING

§ 9-5-4-1 SHORT TITLE AND LEGISLATIVE INTENT.

(A) Sections 9-5-4-1 et seq. shall be known and may be cited as the "Woodburning Ordinance."

(B) It is the intent of the City Council that enactment of §§ 9-5-4-1 et seq. will protect residents from adverse health effects associated with woodburning.
('74 Code, § 6-6-1) (Ord. 49-1988)

§ 9-5-4-2 DEFINITIONS.

For the purpose of §§ 9-5-4-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BURN DOWN. That period of time, not to exceed three hours, after declaring a no burn period required for the cessation of combustion within any solid fuel heating device by withholding fuel or increasing the air-to-fuel ratio.

DIRECTOR. The Director of the Environmental Health Department or a designated representative(s).

PERSON. Any individual, household, firm, partnership, corporation, company, society, association,and legal entity, and every officer, agent or employee thereof.

SOLE SOURCE. One or more solid fuel heating devices which constitute the only source of heat in a building for the purpose of space heating. No solid fuel heating device(s) shall be the sole source of heat if the building is equipped with a permanently installed furnace or heating system designed to heat the building that is connected or unconnected from its energy source, utilizing oil, natural gas, electricity or propane.

SOLID FUEL HEATING DEVICE. Any fireplace, wood heater, wood stove, wood fired boiler, coal fired furnace, coal stove or similar device burning any solid fuel used for aesthetic, cooking (excluding commercial cooking) or heating purposes inside a building.

WOOD HEATER. An enclosed woodburning appliance, including a fireplace insert, capable of an intended for space heating and domestic water heating that meets all of the following criteria:

(1) An air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure described in United States Environmental Protection Agency, 40 CFR Part 60.534;

(2) A useable firebox volume of less than 0.56 cubic meters;

(3) A minimum burn rate less than 5 kg/hr as determined by the test procedure described in the United States Environmental Protection Agency, 40 CFR Part 60.534; and

(4) A maximum weight, excluding devices and fixtures that are normally sold separately, such as flue pipe, chimney and masonry components that are not an integral part of the appliance or heat distribution ducting, of 800 kg.
('74 Code, § 6-6-2) (Ord. 49-1988)

§ 9-5-4-3 NO BURN PERIODS.

From October 1 through February 28, following a burn down period, no person shall operate a solid fuel heating device during a no burn period unless an exemption has been obtained or unless the device is a wood heater that has been emission certified by the United States Environmental Protection Agency. Certified wood heaters may be operated during a no burn period provided that no visible emissions are produced beyond a 20-minute start up period. No burn periods shall be declared by the Director upon review of available meteorological data and a determination that expected atmospheric conditions will not reasonably disperse wood smoke.
('74 Code, § 6-6-3) (Ord. 49-1988)

§ 9-5-4-4 NOTICE REQUIRED.

Notice of no burn periods shall be sufficient if published in a newspaper of general circulation within Bernalillo County, or if presented orally at least three times during a six-hour period by at least two radio or television stations operating within the county, or if presented to the general public in the form of a recorded telephone message, the telephone number for which is published in the telephone directory or newspaper of general circulation within the county.
('74 Code, § 6-6-4) (Ord. 49-1988)

§ 9-5-4-5 EXEMPTIONS.

(A) Exemptions may be granted by the Director if it is determined that a solid fuel heating device is the sole source of heat for the building in which it is situated. A temporary sole source exemption may be granted in the event of failure of the oil, natural gas, electricity or propane heating system. In no event, shall an exemption be issued for more than 150 days. An exemption may be granted for economic or health reasons from §§ 9-5-4-1 et seq. by the Director if the Director determines that the applicant qualifies for energy assistance according to the economic guidelines established under the low income energy assistance program as administered by the Income Support Division of the New Mexico Human Services Department or if the Director determines that failure to grant an exemption would endanger the health of the applicant. Any person seeking an exemption shall do so by filling a written petition with the Director. Petition shall:

(1) State the applicant's name and mailing address;

(2) State the address for which the exemption is sought;

(3) State the period of time for which the exemption is sought;

(4) State reasons for seeking the exemption.

(B) Following receipt of the exemption request, the Director shall either grant the exemption, grant the exemption subject to conditions, or deny the exemption. Any action taken by the Director shall be by written order.
('74 Code, § 6-6-5) (Ord. 49-1988)

§ 9-5-4-6 APPEAL PROCEDURES.

(A) In the event an applicant for an exemption under this subsection is not satisfied with the Director's decision, the applicant may submit to the Director a written request for a hearing, provided the written request is received by the Director within 15 days after mailing of the Director's decision. The hearing shall be conducted within a reasonable time of receipt of the request.

(B) Hearings shall be held before the City Hearing Officer, at a time and place designated by the Hearing Officer. A written notification specifying the time, place, and the procedures governing the hearing shall be mailed to the grievant and to the Director. The grievant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

(1) Before the hearing, the grievant shall have the opportunity to examine and copy all documents, records and regulations of the Director that are relevant to the hearing. Copies shall be at the expense of the grievant. Any document not made available by the Director after written request by the grievant, may not be relied on by the Director at the hearing;

(2) The right to be represented by counsel or other persons chosen as his or her representative;

(3) The right to a private hearing unless the grievant requests a public hearing;

(4) The right to present evidence and arguments in support of his or her grievance to controvert evidence relied on by the Director, and to confront and cross-examine all witnesses on whose testimony or information on the Director relies; and

(5) 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 the issue has been previously decided in another proceeding. If the grievant or the Director 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) At the hearing, the grievant must first show an entitlement to the relief sought, and the Director must then justify his act or failure to act. 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 grievant may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(E) The complainant or the grievant may arrange for a transcript of the hearing in advance and at the expense of the party making the arrangement.

(F) The Hearing Officer shall prepare a written decision together with the reasons therefor, within ten days after the hearing with copies to the grievant and the Director.
('74 Code, § 6-6-6) (Ord. 49-1988)

§ 9-5-4-99 PENALTY.

Any person who violates any of the provisions of §§ 9-5-4-1 et seq. shall be deemed guilty of a petty misdemeanor, and upon conviction thereof, shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances.
('74 Code, § 6-6-7) (Ord. 49-1988)

PART 5: CLEAN INDOOR AIR REGULATIONS

§ 9-5-5-1 SHORT TITLE.

Sections 9-5-5-1 et seq. may be cited as the "Albuquerque Clean Indoor Air Ordinance."
(Ord. 21-2008)

§ 9-5-5-2 LEGISLATIVE FINDINGS AND INTENT.

(A) The Council finds the 1986 Surgeon General's Report concludes that tobacco smoke is a major contributor to indoor air pollution; that breathing secondhand smoke is a cause of disease, including lung cancer in healthy non-smokers; and that separation of people and tobacco smoke within the same air space may reduce but does not eliminate exposure to environmental tobacco smoke.

(B) The Council further finds the 2006 Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, unequivocally concludes that secondhand smoke exposure can cause serious disease, including coronary heart disease and lung cancer, and premature death in children and adults who do not smoke, and that scientific evidence indicates that there is no safe level of exposure to secondhand smoke, and therefore, a reduction of smoke in City of Albuquerque facilities, and in public places and places of employment within the City of Albuquerque, constitutes a public health priority.

(C) Sections 9-5-5-1 et seq. adopt the provisions of the Dee Johnson Clean Indoor Air Act and expand the provisions of that Act to maintain existing city prohibitions on smoking in the following situations:

(1) Where a business is operating as a sole proprietor or with fewer than two employees;

(2) Smoking in a private home where child care, adult care or health care or any combination of those activities is provided and not just during the hours of business operation of such private homes; and

(3) The Albuquerque Biological Park.
(Ord. 21-2008)

§ 9-5-5-3 DEFINITIONS.

For the purpose of §§ 9-5-5-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. An establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of those beverages, including taverns, nightclubs, cocktail lounges and cabarets.

CIGAR BAR. An establishment that:

(1) Is a bar as defined in this section; and

(2) Is engaged in the business of selling cigars for consumption by patrons on the premises and generates 10% or more of its total annual gross revenue or at least $10,000 in annual sales from the sale of cigars, not including any sales from vending machines. A cigar bar that fails to generate at least 10% of its total annual sales from the sale of cigars in the calendar year after December 31, 2006, not including sales from vending machines, shall not be defined as a ***CIGAR BAR*** and shall not thereafter be known as such regardless of sales figures. A cigar bar shall agree to provide adequate information to demonstrate to the city's satisfaction compliance with this definition. Determination by the State of New Mexico that a business is a ***CIGAR BAR*** shall be conclusive evidence that such establishment is a ***CIGAR BAR*** under §§ 9-5-5-1 et seq.

DESIGNATED OUTDOOR SMOKING AREA. An area where smoking may be permitted, designated by an employer or manager, outside an indoor workplace or indoor public place; provided that the following conditions are maintained:

(1) Smoking shall not be permitted near any building entrance, including a door, window or ventilation system of any facility where smoking is prohibited under the provisions of the Albuquerque Clean Indoor Air Ordinance, so as to prevent secondhand smoke from entering the indoor workplace or indoor public place; and

(2) Employees or members of the general public are not required to walk through the smoking area to gain entrance to the indoor workplace or indoor public place.

EMPLOYER. An individual, a partnership, a corporation, the City of Albuquerque or any governmental body over which the city has jurisdiction that employs the services of one or more individuals.

ENCLOSED. Any interior space predominantly or totally bounded on all sides and above by physical barriers, regardless of whether such barriers consist of or include uncovered openings, screened or otherwise partially covered openings or open or closed windows.

INDOOR PUBLIC PLACE. The enclosed area within any governmental or nongovernmental place to which the public is invited or in which the public is permitted regardless of whether work or public business, meetings or hearings occur at any given time.

INDOOR WORKPLACE. Any enclosed place where one or more persons engage in work, including lobbies, reception areas, offices, conference and meeting rooms, employee cafeterias and lunchrooms, break rooms and employee lounges, classrooms, auditoriums, hallways, stairways, waiting areas, elevators and restrooms and includes all indoor workplaces and enclosed parts regardless of whether work occurs at any given time.

PRIVATE CLUB. An organization, whether incorporated or not, that is the owner, lessee or occupant of a building or portion thereof used exclusively for the organization's purposes at all times, that is operated solely for recreational, fraternal, social, patriotic, political, benevolent or athletic purposes, but not for pecuniary gain, and that only sells alcoholic beverages incidental to its operation. The organization shall have bylaws or a constitution to govern its activities and shall have been granted an exemption as a club under the provisions of Section 501 of the Internal Revenue Code of 1986, as amended.

RESTAURANT. A coffee shop, cafeteria, private or public school cafeteria or eating establishment and any other eating establishment that gives or offers for sale food to the public, patrons or employees, including kitchens and catering facilities in which food is prepared on the premises for serving elsewhere or a bar area within or attached to the premises.

RETAIL TOBACCO STORE. A retail store used primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental, including smoke shops, cigar shops

or hookah lounges, and does not include establishments that offer for sale alcoholic beverages for consumption by patrons on the premises.

SECONDHAND SMOKE. Smoke emitted from lighted, smoldering or burning tobacco when the smoker is not inhaling, smoke emitted at the mouthpiece during puff drawing and smoke exhaled by the smoker.

SMOKEFREE AREA. Any building or other enclosed space where smoking is prohibited.

SMOKING. Inhaling, exhaling, burning, carrying or holding any lighted tobacco product, including all types of cigarettes, cigars and pipes and any other lighted tobacco product.

SMOKING PERMITTED AREA. Any building or other enclosed space where smoking may be permitted; provided that secondhand smoke does not infiltrate any area where smoking is prohibited pursuant to the Albuquerque Clean Indoor Air Ordinance.
(Ord. 21-2008)

§ 9-5-5-4 SMOKING PROHIBITED.

(A) It is unlawful for a person to smoke in any indoor workplace or indoor public place or in buses, taxicabs or other means of public transit not specifically exempted pursuant to the Albuquerque Clean Indoor Air Ordinance.

(B) It is unlawful to smoke on the grounds and in all buildings within the Albuquerque Biological Park including the Rio Grande Zoo, Aquarium and Botanical Gardens.
(Ord. 21-2008) Penalty, see § 9-5-5-99

§ 9-5-5-5 SMOKING-PERMITTED AREAS.

Notwithstanding any other provision of the Albuquerque Clean Indoor Air Ordinance, smoking-permitted areas include the following:

(A) A private residence unless it is used commercially to provide child care, adult day care, or serves as a health care facility;

(B) A retail tobacco store;

(C) A cigar bar;

(D) The facilities of a tobacco manufacturing company licensed by the United States to manufacture tobacco products that are operated by the company in its own name and that are used exclusively by the company in its business of manufacturing, marketing or distributing its tobacco products; provided that smoke does not infiltrate other indoor workplaces or other indoor public places where smoking is otherwise prohibited under the Albuquerque Clean Indoor Air Ordinance;

(E) A state-licensed gaming facility, casino or bingo parlor;

(F) An indoor workplace to the extent that tobacco smoking is an integral part of a smoking cessation program that is approved by the department or of medical or scientific research that is conducted in the indoor workplace and in which each room of the indoor workplace in which tobacco smoking is permitted complies with signage requirements;

(G) Designated outdoor smoking areas;

(H) Private clubs;

(I) A limousine under private hire;

(J) Hotel and motel rooms that are rented to guests and are designated as smoking-permitted rooms; provided that not more than 25% of rooms rented to guests in a hotel or motel may be so designated;

(K) Enclosed areas within restaurants, bars, hotel and motel conference or meeting rooms while these places are being used for private functions; provided that none of these areas are open to the general public while the private functions are occurring and provided that smoke does not infiltrate other indoor workplaces or indoor public places where smoking is otherwise prohibited under the Albuquerque Clean Indoor Air Ordinance;

(L) A site that is being used in connection with the practice of cultural or ceremonial activities by Native Americans and that is in accordance with the federal American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a; and

(M) A theatrical stage or a motion picture or television production set when it is necessary for performers to smoke as part of the production.
(Ord. 21-2008)

§ 9-5-5-6 PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS AND VENTILATION SYSTEMS.

Smoking is prohibited near entrances, windows and ventilation systems of all workplaces and public places where smoking is prohibited by the Albuquerque Clean Indoor Air Ordinance. An individual who owns, manages, operates or otherwise controls the use of any premises subject to the provisions of the Albuquerque Clean Indoor Air Ordinance shall establish a smokefree area that extends a reasonable distance from any entrances, windows and ventilation systems to any enclosed areas where smoking is prohibited. The reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and to ensure that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.
(Ord. 21-2008) Penalty, see § 9-5-5-99

§ 9-5-5-7 RESPONSIBILITIES OF EMPLOYERS.

(A) Employers shall provide that their places of employment meet the requirements of the Albuquerque Clean Indoor Air Ordinance.

(B) An employer shall adopt, implement, post and maintain a written smoking policy pursuant to the Albuquerque Clean Indoor Air Ordinance.
(Ord. 21-2008) Penalty, see § 9-5-5-99

§ 9-5-5-8 POSTED SMOKEFREE AND SMOKING-PERMITTED AREAS.

(A) To advise persons of the existence of smokefree areas or smoking-permitted areas, signs shall be posted as follows:

(1) For each indoor workplace or indoor public place where smoking is prohibited pursuant to the Albuquerque Clean Indoor Air Ordinance, a "NO SMOKING" sign shall be posted where it is clear, conspicuous and easily legible at each public entrance. Posting of "NO SMOKING" signs is the responsibility of the owner, operator, manager or other person having control of the indoor workplace or indoor public place; and

(2) For each indoor workplace or indoor public place where smoking is permitted pursuant to the Albuquerque Clean Indoor Air Ordinance, a "SMOKING PERMITTED" sign shall be posted where it is clear, conspicuous and easily legible at each public entrance, unless an owner, operator or manager chooses to prohibit smoking in all or part of an indoor workplace or indoor public place where smoking is otherwise permitted.

(B) Nothing in the Albuquerque Clean Indoor Air Ordinance shall be construed so as to require the posting of signs at a residence unless it is used commercially to provide child care, adult day care, or serves as a health care facility.
(Ord. 21-2008)

§ 9-5-5-9 ENFORCEMENT.

(A) The Albuquerque Fire or Police Departments or the Bernalillo County Sheriff's Department shall enforce the Albuquerque Clean Indoor Air Ordinance by issuance of a citation.

(B) A person may register a complaint regarding an alleged violation pursuant to the Albuquerque Clean Indoor Air Ordinance to initiate enforcement of that ordinance with the Mayor or the Albuquerque Fire or Police Departments.

(C) The designated enforcement agencies may inspect an establishment for compliance with the Albuquerque Clean Indoor Air Ordinance.
(Ord. 21-2008)

§ 9-5-5-10 NONRETALIATION; NONWAIVER.

(A) A person or employer shall not discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or patron because that employee, applicant or patron exercises any rights afforded by the Albuquerque Clean Indoor Air Ordinance or reports or attempts to prosecute a violation of that ordinance.

(B) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.
(Ord. 21-2008) Penalty, see § 9-5-5-99

§ 9-5-5-98 VIOLATIONS.

It is unlawful for a person who owns, manages, operates or otherwise controls the use of premises subject to regulation under the Albuquerque Clean Indoor Air Ordinance to violate its provisions. The owner, manager or operator of premises subject to regulation under the Albuquerque Clean Indoor Air Ordinance shall not be subject to a penalty if a person on the premises is in violation of the Albuquerque Clean Indoor Air Ordinance as long as the owner, manager or operator has posted signs, implemented the appropriate policy and informed the person that the person is in violation of the Albuquerque Clean Indoor Air Ordinance.
(Ord. 21-2008) Penalty, see § 9-5-5-99

§ 9-5-5-99 PENALTY.

A person 18 years of age or older who violates any provision of the Albuquerque Clean Indoor Air Ordinance shall be guilty of a petty misdemeanor and is subject to:

(A) A fine not to exceed $100 for the first violation of that ordinance;

(B) A fine not to exceed $200 for the second violation of that ordinance within any consecutive 12-month period of the first violation; and

(C) A fine not to exceed $500 for the third and each subsequent violation of that ordinance within any consecutive 12-month period of a previous violation.
(Ord. 21-2008)

PART 6: METROPOLITAN ENVIRONMENTAL HEALTH ADVISORY BOARD

§ 9-5-6-1 PURPOSE.

A Metropolitan Environmental Health Advisory Board is established for the following purposes to:

(A) Keep itself informed of community environmental health needs and to serve as a forum for public discussion;

(B) Recommend to the Mayor and County Manager, policies for program improvement;

(C) Advise the Environmental Health Department regarding environmental health needs and programs;

(D) Hold hearings and make recommendations on appeals from orders of the Environmental Health Department as provided by other ordinances;

(E) Perform the functions of the Albuquerque-Bernalillo County Air Quality Control Board as provided in the City and County Air Quality Control Board Regulations, §§ 6-5-1-1 et seq.

(F) Advise the Environmental Planning Commission regarding air and water quality matters.
('74 Code, § 6-17-1) (Ord. 12-1975; Am. Ord. 72-1976)

§ 9-5-6-2 ORGANIZATION AND MEMBERSHIP.

(A) The Metropolitan Environmental Health Advisory Board will consist of seven members, three of whom shall be appointed by the County Commission and four of whom shall be appointed by the Mayor.

(B) Members shall serve for three-year terms, except that three of the initial terms shall be for two-year terms. The three members to serve an initial term of two years shall be those members previously determined by lot in accordance with the original city and county ordinances creating the Environmental Health Advisory Board.

(C) In years in which three terms expire, two of the vacancies shall be filled by individuals appointed by the Mayor and one of the vacancies shall be filled by an

individual appointed by the County Commission. In years in which four such terms expire, two of the vacancies shall be filled by individuals appointed by the Mayor and two vacancies shall be filled by individuals appointed by the County Commission. Members previously appointed and serving at the time §§ 9-5-6-1 et seq. are enacted shall continue serving to the terms they were named and their terms shall not be affected by the passage of §§ 9-5-6-1 et seq.

(D) City-appointed members shall be residents of the city, and county-appointed members shall be residents of the county.

(E) At least a majority of the membership of the Board shall be individuals who represent the public interest and meet the requirements of state and federal guidelines set forth in the New Mexico Air Quality Control Act, Sections 74-2-1 et seq. NMSA 1978, and the federal Clean Air Act, 42 USCA § 7401 et seq., as amended. Further, to the extent that it does not conflict with this division. Board members shall be representative of such groups as environmental health, engineering, legal, education, scientific, environmental, or industrial interests.

(F) The Director of the Department of Environmental Health is an *ex officio* member of the Board, but does not have a vote.

(G) A quorum of four members is required for the conduct of business. The Board will adopt rules to govern its proceedings.

(H) The Board will meet in appropriate public facilities providing seating arrangements for the expected public. The Board shall meet monthly, unless a special need requires that additional meetings be held. Notice of time, place, and agenda of meetings must be published as prescribed by law. Meetings shall be open to the public as required by law.

(I) Minutes of Board meetings shall be kept and filed with the City Clerk and County Clerk. Additional copies, as indicated, shall be forwarded to the Chief Administrative Officer and the County Manager.
('74 Code, § 6-17-2) (Ord. 12-1975; Am. Ord. 32-1990)

§ 9-5-6-3 CONFLICT OF INTEREST.

Any Board member having a pecuniary interest in matters before the Board must disqualify himself from discussion and vote on such matters.
('74 Code, § 6-17-3) (Ord. 12-1975)