

ALBUQUERQUE INTRAGOVERNMENTAL CONFERENCE COMMITTEE

ICC Case Number 01-2025

July 7, 2025

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Article XIX of the City Charter and ROA 1994, Section 2-16-5(I), the Committee issues the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On May 2, 2016, by a vote of 8-1, the City Council passed and adopted Resolution, Council Bill No. R-16-41 (Enactment No. R-2016-039), “Establishing Minimum Staffing Requirements for Albuquerque Fire Department Engine Apparatus, Rescue Apparatus, Ladder Apparatus, Hazardous Materials Squads, Heavy Technical Rescue Squads, Quality Assurance Units, Battalion Commander Units and Support Divisions.” Resp. Ex. 1 at 1, 4.

2. Section 1 of R-16-41 resolved, in pertinent part, “[t]hat, with the exception of temporary exigencies or emergencies, as determined by the Chief, the City of Albuquerque will continue the policy and practice of staffing rank specific fighters to all . . . ***Rescue apparatus with a minimum of two (2) firefighters*** . . .” Resp. Ex. 1 at 3 (emphasis added).

3. Mayor Richard J. Berry signed and approved R-16-41 on May 18, 2016. *Id.* at 4.

4. On March 3, 2025, by a vote of 7-2, the Council passed and adopted a Resolution, Council Bill No. R-25-122 (Enactment No. R-2025-011), “Establishing minimum staffing requirements for Albuquerque Fire Rescue, Rescue Apparatus.” SOI at 1; SOI Ex. A at 1; Resp. Ex. 2 at 4.

5. Section 1 of R-25-122, resolved in pertinent part, “[t]hat, with the exception of temporary exigencies or emergencies, as determined by the Chief, the City of Albuquerque will

continue the policy and practice of staffing rank specific fighters to all . . . Rescue apparatus with a minimum of two (2) *paramedic* firefighters . . .” SOI Ex. A at 2 (emphasis added).

6. At its March 3, 2025 meeting, the Council heard and made arguments for and against R-25-122. Mar. 3, 2025 Council meeting at 2:54:20-5:28:40, available at https://cabq.granicus.com/player/clip/506?view_id=2&redirect=true.

7. In particular, the Chief Administrative Officer apprised the Council that Mayor Berry’s agreement to R-2016-039 was premised on the removal of the word “paramedics” from the proposed resolution and that R-2016-039 raised separation of powers concerns. *Id.* at 3:18:26-3:19:28.

8. The Chief Administrative Officer also stated that R-25-122 was “of concern, as we set staffing decisions with legislation” and that the City Attorney had opined that R-25-122 might conflict with the operation of other ordinances, including the Labor Management Relations Ordinance. *Id.* at 3:19:46-3:22:12.

9. The City Attorney also raised separation of powers concerns, as well as potential conflicts with ordinances giving authority over staffing to the Administration. *Id.* at 3:33:00-3:35:00.

10. The Council voted to pass R-25-122 by a margin of 7-2 on March 3, 2025.

11. The Mayor did not sign or approve R-25-122, nor did the Mayor veto R-25-122. Resp. at 3-4.

12. On April 1, 2025, the Mayor submitted his Statement of Issues, contending that:

- a. R-25-122 violates the City Charter and the doctrine of separation of powers by requiring two paramedics on each Rescue Apparatus, SOI at 6-12;

- b. R-25-122 violates the City Charter and doctrine of separation of powers by requiring Albuquerque Fire Rescue to confer with IAFF Local 244 before implementing any staffing modifications, SOI at 12; and
 - c. R-25-122 is invalid because it violates the Merit System Ordinance (ROA 1994 §§ 3-1-1 through 3-1-28) and the Labor-Management Relations Ordinance (ROA 1994 §§ 3-2-2 through 3-2-19), SOI at 12-14.
- 13. On April 16, 2025, the Council submitted its Response, contending that:
 - a. the Council has the power, with respect to issues of public welfare, to pass legislation impacting executive staffing, Resp. at 6-8;
 - b. R-25-122 does not interfere with the Executive’s administrative duties, including the Merit System Ordinance and the Labor-Management Relations Ordinance, Resp. at 9-11;
 - c. the Mayor cannot challenge R-25-122’s bargaining mandate, Resp. at 11-13; and
 - d. the Mayor waived a separation of powers challenge by failing to veto R-25-122. Resp. at 13.
- 14. On May 1, 2025, the Mayor submitted a Notice of Errata, correcting two citation errors in the Statement of Issues.
- 15. The Committee heard argument from the parties on June 3, 2025, after which, pursuant to NMSA 1978, Section 10-15-1(H)(3) (2013), the Committee went into closed session for deliberations. The Committee did not reach a decision on June 3, 2025.

16. The Committee continued its deliberations, again in closed session pursuant to NMSA 1978, Section 10-15-1(H)(3) (2013), on June 16, 2025. In open session, the Council voted, by a two to one majority, to sustain the Mayor’s challenge to R-25-122.

CONCLUSIONS OF LAW

1. The City Charter grants to the City Council “the power to adopt all ordinances, resolutions or other legislation conducive to the welfare of the people of the city and not inconsistent with this Charter, and the Council shall not perform any executive functions except those functions assigned to the Council by this Charter.” City Charter, art. IV, § 8.

2. The City Charter grants to the Mayor the power to “control and direct the executive branch[,] . . . delegate executive and administrative power within the executive branch[,] . . .

3. The City Charter imposes on the Mayor a duty to, with the advice and consent of the Council, “appoint the Chief Administrative Officer, [and] any deputy administrative officers,” “[o]rganize the executive branch of the city,” “[b]e responsible for the administration and protection of the merit system,” and “[e]xercise administrative control and supervision over and appoint directors of all city departments, which appointments shall not require the advice or consent of the council except” with respect to specific officers not at issue in this matter. City Charter, art. V, § 4(a)-(d).

4. The City Charter also imposes on the Mayor a duty to “[f]aithfully execute and comply with all laws, ordinances, regulations and resolutions of the city” City Charter, art. V, § 4(l).

5. The Merit System Ordinance provides that “the Mayor designates the Chief Administrative Officer of the city to be responsible for the administration of the merit system.”

ROA 1994, § 3-1-1. That responsibility includes the authority “[t]o direct the work of city employees” and “[t]o determine staffing requirements.” ROA 1994, § 3-1-1(C)(1),(4).

6. The Labor-Management Relations Ordinance provides that “the Mayor and his administrative staff shall have” the right “[t]o direct of its employees” and [t]o determine staffing requirements.” ROA 1994, § 3-2-5(A),(D).

7. The Council’s argument that the Mayor waived the right to challenge R-25-122 by failing to act on it is a threshold issue; if the Mayor waived his right to challenge, then consideration of the merits would be unnecessary.

8. Neither the Charter nor any Ordinance expressly addresses the issue of whether a mayor waives the right to challenge legislation by failing to veto that legislation.

9. Waiver requires “an existing right, a knowledge of its existence, and an actual intention to relinquish it, or such conduct as warrants an inference of the relinquishment.” *Brown v. Jimerson*, 1980-NMSC-125, ¶ 6, 95 N.M. 191 (quoting *Ed Black’s Chevrolet Center, Inc. v. Melichar*, 1970-NMSC-091, ¶ 6, 81 N.M. 602). Waiver “is a voluntary act and implies an abandonment of a right or privilege.” *Id.* “In no case will a waiver be presumed or implied contrary to the intention of the party whose rights would be injuriously affected thereby, unless, by his conduct, the opposite party has been misled, to his prejudice, into the honest belief that such waiver was intended or consented to.” *Id.*

10. The Mayor has an existing right to challenge acts of the Council. City Charter, art. XIX; ROA 1994 §§ 2-16-1 through 2-16-5.

11. The Mayor (through the Chief Administrative Officer and the City Attorney) made clear at the March 3, 2025 Council meeting that the Mayor believes R-25-122 encroaches on executive authority and should not pass. *See* FOF 7-9.

12. It would not be reasonable to infer, given the Administration’s comments on March 3, 2025, that the Mayor intended or consented to any waiver. This is particularly so where R-25-122 passed by a margin that suggests that the Council would have been able to override any veto. *See* FOF 4.

13. The Mayor did not waive his right to challenge R-25-122.

14. Because R-25-122 expressly states that it “establish[es] minimum staffing requirements” for Rescue Apparatus, and because it specifies that each Rescue Apparatus must have two paramedics, R-25-122 determines staffing requirements . FOF 4.

15. Because the Mayor’s duties include both “[o]rganiz[ing] the executive branch of the city” and “administrative control and supervision over . . . all city departments,” as well as being “responsible for the administration and protection of the merit system,” City Charter, art. V, § 4(a)-(b), the Mayor is responsible for administrative control and supervision over Albuquerque Fire Rescue.

16. The City’s ordinances recognize that the Mayor’s duties and powers include determining staffing requirements. *See* ROA 1994, § 3-1-1(C)(1),(4); ROA 1994, § 3-2-5(A),(D).

17. Because R-25-122 determines staffing requirements, which is an executive function, it contravenes the City Charter’s command that “the Council shall not perform any executive functions except those functions assigned to the Council by this Charter.” City Charter, art. IV, § 8.

18. The Council thus does not have the power under the City Charter to specify staffing requirements with the degree of specificity set forth in R-25-122.

/s/ Luis G. Stelzner
LUIS G. STELZNER, CHAIR
