CITY of ALBUQUERQUE
TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. O-22-5 ENACTMENT NO. D-2022-005

SPONSORED BY: Isaac Benton by request

1 ORDINANCE
2 AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE,
3 NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2022 IN TWO
4 SERIES IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF $5,000,000
5 DESIGNATED AS (I) THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE
6 INDUSTRIAL REVENUE BONDS (HERITAGE DEFENDER PROJECT), SERIES
7 2022A, AND (II) THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE
8 INDUSTRIAL REVENUE BONDS (AGENDA PROJECT), SERIES 2022B, ISSUED
9 COLLECTIVELY TO PROVIDE FUNDS TO (I) FINANCE THE ACQUISITION,
10 CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF A FABRICATION, LIGHT
11 MANUFACTURING AND AUTOMOTIVE RESTORATION FACILITY FOR THE
12 BENEFIT OF HERITAGE DEFENDER, LLC, AND (II) FINANCE THE
13 ACQUISITION, RENOVATION, IMPROVEMENT AND EQUIPPING OF A MIXED
14 USE FACILITY FOR PUBLIC RELATIONS AND OTHER SERVICES FOR THE
15 BENEFIT OF AGENDA, LLC; AUTHORIZING THE EXECUTION AND DELIVERY
16 OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT,
17 BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF
18 EACH SERIES OF BONDS; MAKING CERTAIN DETERMINATIONS AND
19 FINDINGS RELATING TO EACH SERIES OF BONDS AND THE PROJECT;
20 RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL
21 ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, the City of Albuquerque (the "City") is a legally and regularly created,
23 established, organized, and existing municipal corporation of the State of New
24 Mexico (the "State"); and
WHEREAS, pursuant to Sections 3-32-1 through 3-32-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the “Act”), the City is authorized to acquire industrial revenue projects located within the corporate limits of the municipality for the purpose of promoting industry and trade by inducing commercial enterprises to locate or expand in the State of New Mexico; and

WHEREAS, pursuant to the Act, the City is authorized to issue revenue bonds for the purpose of defraying the cost of acquiring any project and to secure the payment of such bonds, all as provided in the Act; and

WHEREAS, Heritage Defender, LLC (“Heritage”) is a limited liability company organized under the laws of the State of New Mexico and is authorized to do business in New Mexico; and

WHEREAS, Heritage has requested that the City issue its industrial revenue bonds pursuant to the Act to finance the acquisition, construction, improvement and equipping of a fabrication, light manufacturing and automotive restoration facility within the corporate limits of the City (the “Heritage Project”); and

WHEREAS, Agenda, LLC (“Agenda” and collectively with Heritage, the “Companies”) is a limited liability company organized under the laws of the State of New Mexico and is authorized to do business in New Mexico; and

WHEREAS, Agenda has requested that the City issue its industrial revenue bonds pursuant to the Act to finance the acquisition, construction, renovation, improvement and equipping of a mixed use facility within the corporate limits of the City for public relations and other services for the benefit of Agenda (the “Agenda Project” and collectively with the Heritage Project, the “Projects”); and

WHEREAS, the City Council of the City of Albuquerque (the “Council”) has adopted an ordinance establishing the Albuquerque Development Commission (the “Commission”) to review projects proposed to be financed with industrial revenue bonds pursuant to City Resolution No. 16-1985, as amended; and

WHEREAS, the Companies have presented to the City and the Commission a proposal (the “Project Plans”) whereby the City shall, pursuant to the Act and for the benefit of Heritage, acquire, construct, improve and equip certain property and equipment located at 1701 5th St. NW within the boundaries of the City (the
“Heritage Property”) and, for the benefit of Agenda, acquire, construct, renovate, improve and equip certain property and equipment located at 1715 and 1719 5th St. NW within the boundaries of the City (the “Agenda Property” and together with the Heritage Property are collectively the “Project Properties”) all for the purpose of operating the Companies’ respective businesses and pursuant to which the City would issue its taxable industrial revenue bonds in order to finance the Projects; and

WHEREAS, the Commission has reviewed the Project Plans, and on January 20, 2022, has determined that the Companies have complied with City Resolution No. 16-1985, and has recommended approval of the Project Plans by the Council; and

WHEREAS, under the Companies’ respective Project Plans, the City would enter into two Indentures dated as of March 1, 2022 (the “Indentures”) between the City and a corporate depositary satisfactory to the City to be designated at a later date, as depositary (the “Depositary”), pursuant to which, together with this ordinance (the “Bond Ordinance”), the City would issue its bonds in two series designated as the (i) City of Albuquerque, New Mexico Taxable Industrial Revenue Bonds (Heritage Defender Project), Series 2022A (the “Series 2022A Bonds”), and (ii) City of Albuquerque, New Mexico Taxable Industrial Revenue Bonds (Agenda Project), Series 2022B (the “Series 2022B Bonds” and collectively with the Series 2022A Bonds, the “Bonds”); and

WHEREAS, under the Companies’ respective Project Plan, the City would enter into separate Lease Agreements with each of Heritage and Agenda, dated as of March 1, 2022 (collectively the “Leases” or individually a “Lease”), pursuant to which Heritage and Agenda will lease their respective Project Properties from the City and will make payments to the Depositary sufficient to pay the principal of, redemption premium, if any, and interest on the respective Bonds, and to pay all other obligations incurred pursuant to the provisions of the Leases and this Bond Ordinance; and

WHEREAS, under its Lease, Heritage will lease the Heritage Property from the City and will make payments to the Depositary sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2022A Bonds, and to pay all
other obligations incurred pursuant to the provisions of its Lease and this Bond Ordinance; and

WHEREAS, under its Lease, Agenda will lease the Agenda Property from the City and will make payments to the Depositary sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2022B Bonds, and to pay all other obligations incurred pursuant to the provisions of its Lease and this Bond Ordinance; and

WHEREAS, under the Companies' Project Plans, each Lease will provide that Heritage shall maintain the Heritage Project and carry all proper insurance with respect thereto and Agenda shall maintain the Agenda Project and carry all proper insurance with respect thereto; and

WHEREAS, the proceeds of the Series 2022A Bonds shall be used for the purpose of financing the acquisition, construction, improvement and equipping of the Heritage Project (the "Heritage Financing") and the proceeds of the Series 2022B Bonds shall be used for the purpose of financing the acquisition, construction, renovation, improvement and equipping of the Agenda Project (the "Agenda Financing" and together with the Heritage Financing are collectively the "Financing"); and

WHEREAS, the Bonds in a maximum, aggregate principal amount not to exceed $5,000,000 will be issued, sold, and delivered by the City in a private sale to one or more affiliates of the Companies (each a "Purchaser") pursuant to separate bond purchase agreements for each series of Bonds (the "Bond Purchase Agreements") among the City, the Company, and each Purchaser; and

WHEREAS, the proceeds of the Series 2022A Bonds shall be applied to pay the costs of the Heritage Project and to pay certain costs associated with the transaction; and

WHEREAS, the proceeds of the Series 2022B Bonds shall be applied to pay the costs of the Agenda Project and to pay certain costs associated with the transaction; and
WHEREAS, the City is authorized to enter into the Leases, the Indentures, the Bond Purchase Agreements and other related documents and to issue the Bonds pursuant to the Act and this Bond Ordinance; and

WHEREAS, after having considered the provisions of the Project Plans and the Financing, the Council has concluded that it is in the best interest of the City to authorize the issuance of the Bonds to finance the Projects, and that the City’s issuance of the Bonds shall constitute a valid public purpose under the Act; and

WHEREAS, the Council has been advised by the Companies that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the Bonds are being sold to a Purchaser, which is an affiliate of the Companies, in a private sale without the participation of an underwriter; and

WHEREAS, there has been published in the Albuquerque Journal, a newspaper of general circulation in the City, public notice of the Council’s intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location, and size of the Projects and the Project Properties, and the amount of the Bonds to be issued to finance the Projects, which notice was published at least fourteen (14) days prior to hearing and final action on this Bond Ordinance; and

WHEREAS, the proposed forms of the following documents have been filed with the City Clerk and presented to the Council: (1) Project Plans; (2) Leases; (3) Indentures; and (4) Bond Purchase Agreements (collectively the “Bond Documents”); and

WHEREAS, the City has delivered notice to the County of Bernalillo, State of New Mexico, of its intent to consider issuance of the Bonds, which notice was given at least thirty (30) days prior to the meeting at which final action is to be taken on this Bond Ordinance as required by Section 3-32-6.1, New Mexico Statutes Annotated, 1978 Compilation, as amended.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:
Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Council and the officials of the City directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. THE PROJECT PLANS. The Projects to be financed with the Bonds consists of (i) the acquisition, construction, improvement and equipping of a fabrication, light manufacturing and automotive restoration facility within the corporate limits of the City for the benefit of Heritage, and (ii) the acquisition, construction, renovation, improvement and equipping of a mixed use facility within the corporate limits of the City for public relations and other services for the benefit of Agenda. The Companies may use additional available money to accomplish the respective Projects. The Project Plans are hereby approved in all respects.

Section 3. FINDINGS. The Council hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Projects and hereby finds and determines that the issuance of the Bonds pursuant to this Bond Ordinance and the Act to provide funds for the Projects is necessary and advisable and in the interest of the public, and will promote the public health, safety, morals, convenience, economy, and welfare of the City and the residents of the City.

The Council finds that:

1. The Bonds will be issued for the purpose of financing the Projects;
2. The aggregate face amount of obligations to be issued for the purpose of financing the Projects shall not exceed $5,000,000;
3. The developer and operator of the Heritage Project is Heritage;
4. The developer and operator of the Agenda Project is Agenda and,
5. The Project Properties are located in the City.

Section 4. AUTHORIZATION AND APPROVAL OF THE BONDS. To finance the cost of acquiring the Project Properties, the City hereby authorizes and approves the issuance and sale of its industrial revenue bonds to be designated (i) "City of Albuquerque, New Mexico Taxable Industrial Revenue Bonds (Heritage Defender Project), Series 2022A" and (ii) "City of Albuquerque, New Mexico Taxable Industrial Revenue Bonds (Agenda Project), Series 2022B" in two series which when
combined would be in the maximum, aggregate principal amount of $5,000,000 and the use of the proceeds of the Bonds to finance the cost of the Projects and to pay expenses relating thereto.

Section 5. SALE OF THE BONDS. The sale of each series of Bonds to a Purchaser at a purchase price equal to the par amount of each series of Bonds is hereby authorized and approved.

Section 6. FORM AND TERM OF THE BONDS. Subject to the limitations set forth in this Bond Ordinance, the Bonds shall be: (i) in the form and shall be numbered and dated all as set forth in the Indentures; (ii) payable as to principal and interest, and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indentures; and, (iii) issued in a combined principal amount not to exceed $5,000,000, bearing interest at the rates and maturing on the dates set forth in the Indentures. The interest rates on the Bonds shall not exceed 12% per annum. The Mayor or the Chief Administrative Officer of the City shall sign the Bonds.

Section 7. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS. The form, terms, and provisions of the Bond Documents in the form on deposit in the office of the City Clerk are in all respects approved, authorized, and confirmed, and the City shall enter into such Bond Documents substantially in the form of each such document on deposit with the City Clerk, with only such changes as are not inconsistent with this Bond Ordinance or such other changes as may be approved by supplemental resolution of the Council.

(A) The Council authorizes the Mayor or the Chief Administrative Officer of the City to execute and deliver the Bond Documents in the name and on behalf of the City, and the Council authorizes the City Clerk or Deputy City Clerk to attest to, as necessary, the Bond Documents and the Bonds with such changes therein as are not inconsistent with this Bond Ordinance.

(B) The Mayor, Chief Administrative Officer, Chief Financial Officer, City Treasurer, and City Clerk are further authorized to execute, authenticate, and deliver such certifications, instruments, documents, letters, and other agreements, including security agreements, and to do such other acts and things, either prior to or after the
date of delivery of the Bonds, as are necessary or appropriate to consummate the
transactions contemplated by the Bond Documents.

(C) The officers of the City shall take such action as is necessary to effectuate
the provisions of theIndentures and shall take such action as is necessary in
conformity with the Act and this Bond Ordinance to finance the costs of the Projects
and for carrying out other transactions as contemplated by this Bond Ordinance and
the Bond Documents including, without limitation, the execution and delivery of any
closing documents to be delivered in connection with the sale and delivery of the
Bonds.

Section 8. DELIVERY OF THE BONDS. Upon the execution of the Bond
Documents and the satisfaction of the conditions set forth in the Bond Documents,
the Bonds shall be executed, authenticated, and delivered to a Purchaser. None of
the Bonds shall be valid for any purpose until such Bond has been properly
authenticated as set forth in the Indenture.

Section 9. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND
INTEREST AND OTHER MATTERS. The Council makes the following
determinations and findings in accordance with the Act:

(A) The maximum amount necessary in each year to pay the principal of and
interest on the Series 2022A Bonds in the amount of $1,500,000 and bearing
interest at the rate of 3.0% is as follows:

<table>
<thead>
<tr>
<th>Year Ended</th>
<th>Maturing Principal</th>
<th>Interest Amount</th>
<th>Total Debt Service</th>
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<tr>
<td>12/31/22</td>
<td>$0</td>
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<tr>
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<td>$45,000</td>
<td>$45,000</td>
</tr>
<tr>
<td></td>
<td>Year Ended</td>
<td>Maturing Principal</td>
<td>Interest Amount</td>
</tr>
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<td>---------------------</td>
<td>-----------------</td>
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<td>$0</td>
<td>$45,000</td>
</tr>
<tr>
<td>10</td>
<td>12/31/41</td>
<td>$1,500,000</td>
<td>$45,000</td>
</tr>
</tbody>
</table>

(B) The maximum amount necessary in each year to pay the principal of and interest on the Series 2022B Bonds in the amount of $3,500,000 and bearing interest at the rate of 3.0% is as follows:
<table>
<thead>
<tr>
<th>Date</th>
<th>Lease Payment</th>
<th>Initial Deposit</th>
<th>Total Depreciation</th>
</tr>
</thead>
<tbody>
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<td>12/31/39</td>
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<td>$105,000</td>
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<tr>
<td>12/31/40</td>
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<td>12/31/41</td>
<td>$3,500,000</td>
<td>$105,000</td>
<td>$3,605,000</td>
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</tbody>
</table>

(C) The terms under which the Heritage Property is leased provides that Heritage shall maintain the Heritage Property and carry all proper insurance (or self-insure) with respect to the Heritage Property.

(D) The terms under which the Agenda Property is leased provides that Agenda shall maintain the Agenda Property and carry all proper insurance (or self-insure) with respect to the Agenda Property.

(E) The lease rentals payable under the Lease for the Heritage Property shall be at least sufficient to pay the principal and interest payments on the Series 2022A Bonds set forth in Paragraphs (A) of this Section 9 when due and otherwise render the financing of the acquisition of the Heritage Property entirely self-liquidating. There shall be no payments to any reserve fund or sinking fund installment payments.

(F) The lease rentals payable under the Lease for the Agenda Property shall be at least sufficient to pay the principal and interest payments on the Series 2022B Bonds set forth in Paragraphs (B) of this Section 9 when due and otherwise render the financing of the acquisition of the Agenda Property entirely self-liquidating. There shall be no payments to any reserve fund or sinking fund installment payments.

Section 10. NONTAXABLE TRANSACTION CERTIFICATES. Heritage, as agent for the City, will acquire the Heritage Project and Agenda, as agent for the City, will acquire the Agenda Project. The City will cooperate with the Companies to obtain and allow use of Type 9 Nontaxable Transaction Certificates ("Certificates") that have been properly executed for acquisition of tangible personal property relating to the Projects as applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Companies shall not use the Certificates other than for such things as may be permitted by law, if any, nor shall Heritage use such Certificates after the completion of the Heritage Project nor Agenda use such Certificates after the completion of the Agenda Project. No costs, expenses or other monetary relief will be recoverable from the City by vendors of equipment.
Section 11. LIMITED OBLIGATIONS. The Bonds shall be special limited
obligations of the City payable solely from the revenues derived from the Leases and
payable by the Companies as described in the Indenture, and shall never constitute
a debt or indebtedness of the City or the State or any political subdivision thereof
within the meaning of any provision or limitation of the State Constitution, statutes, or
home-rule charter of the City, and shall not constitute or give rise to a pecuniary
liability of the City or a charge against its general credit or taxing power. Nothing
contained in this Bond Ordinance or the Bond Documents, or any other instrument,
shall be construed as obligating the City (except with respect to the Project
Properties and the application of the revenues therefrom and the proceeds of the
Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability
or charge upon the general credit of the City or against its taxing power, nor shall the
breach of any agreement contained in this Bond Ordinance, the Bond Documents,
the Bonds, or any other instrument be construed as obligating the City (except with
respect to the Project Properties and the application of revenues therefrom and the
proceeds of the Bonds all as provided in the Bond Documents) nor as incurring a
pecuniary liability or a charge upon the general credit of the City or against its taxing
power, the City having no power to pay out of its general funds, or otherwise
contribute any part of the costs of acquiring the Project Properties, nor power to
operate the Project as a business or in any manner except as lessor and seller of
the Project Properties.

Section 12. APPROVAL OF INDEMNIFICATION. The Council specifically
approves the provisions of the Leases relating to indemnification which provide that
the Companies shall indemnify and hold harmless the City and its City Councilors,
officials, members, officers, employees, and agents against liability to the
Companies or to any third parties that may be asserted against the City, its City
Councilors, officials, members, officers, employees, and agents with respect to the
City's ownership of the Project Properties or the issuance of the Bonds and arising
from the condition of the Project Properties or the acquisition or operation of the
Project Properties by the Companies, except to the extent that Section 56-7-1, New
Mexico Statutes Annotated, 1978 Compilation, as amended, applies, and except
claims for any loss or damage arising out of or resulting from the gross negligence or
willful misconduct of the City or any official, member, officer, employee, or agent of
the City.

Section 13. BOND ORDINANCE IRREPEALABLE. After one or more series of
the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the
Bonds, including all interest thereon, are fully paid, cancelled, and discharged, or
until there has been defeasance of the Bonds in accordance with the Indentures.

Section 14. SEVERABILITY. If any section, paragraph, clause or provision of
this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the
invalidity or unenforceability of that section, paragraph, clause, or provision shall not
affect any of the remaining provisions of this Bond Ordinance.

Section 15. REPEALER. All by-laws, ordinances, resolutions, and orders, or
parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond
Ordinance but only to the extent of that inconsistency. This repealer shall not be
construed to revive any by-law, ordinance, resolution, or order, or part thereof,
previously repealed.

Section 16. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE
DATE. This Bond Ordinance, immediately upon its final passage and approval, shall
be recorded in the ordinance book of the City, kept for that purpose, and shall be
there authenticated by the signature of the Mayor and the presiding officer of the
City Council, and by the signature of the City Clerk or any Deputy City Clerk, and
notice of adoption thereof shall be published once in a newspaper that maintains an
office in, and is of general circulation in, the City, and shall be in full force and effect
five (5) days following such publication.

Section 17. GENERAL SUMMARY FOR PUBLICATION. The title and general
summary of the subject contained in this Bond Ordinance shall be published in
substantially the following form:

CITY OF ALBUQUERQUE, NEW MEXICO
NOTICE OF ADOPTION OF ORDINANCE

Notice is hereby given of the title and of a general summary of the subject matter
contained in City Ordinance No. __________ (the "Ordinance"), duly adopted and
approved by the City Council of the City of Albuquerque, New Mexico, on February 7, 2022. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk in the office of the City Clerk, Albuquerque/Bernalillo County Government Center, One Civic Plaza, N.W., Albuquerque, New Mexico.

The title of the Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS, SERIES 2022 IN TWO SERIES IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT OF $5,000,000 DESIGNATED AS (I) THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (HERITAGE DEFENDER PROJECT), SERIES 2022A, AND (II) THE CITY OF ALBUQUERQUE, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (AGENDA PROJECT), SERIES 2022B, ISSUED COLLECTIVELY TO PROVIDE FUNDS TO (I) FINANCE THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF A FABRICATION, LIGHT MANUFACTURING AND AUTOMOTIVE RESTORATION FACILITY FOR THE BENEFIT OF HERITAGE DEFENDER, LLC, AND (II) FINANCE THE ACQUISITION, RENOVATION, IMPROVEMENT AND EQUIPPING OF A MIXED USE FACILITY FOR PUBLIC RELATIONS AND OTHER SERVICES FOR THE BENEFIT OF AGENDA, LLC; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, BONDS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF EACH SERIES OF BONDS; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO EACH SERIES OF BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The title sets forth a general summary of the subject matter contained in the Ordinance.
PASSED AND ADOPTED THIS 7th DAY OF February, 2022
BY A VOTE OF: 9 FOR 0 AGAINST.

Isaac Benton, President
City Council

APPROVED THIS _______ DAY OF ________, 2022

Timothy M. Keller, Mayor
City of Albuquerque

Bill No. O-22-5

ATTEST:

Ethan Watson, City Clerk