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1 **c. City Council finds that personnel hearings and zoning hearings**
2 **involve factors not at play in other administrative processes. City**
3 **Council finds that personnel hearings should have a mechanism for**
4 **challenging the bias of hearing officers. To the extent of any actual or**
5 **perceived conflict between the IHO Ordinance and any previously**
6 **existing ordinance, even if the pre-existing ordinance is arguably more**
7 **specific on any particular topic or point, it is the intent of the City**
8 **Council that the IHO Ordinance shall prevail. Zoning hearings, which**
9 **have been recently adjudicated by the Independent Office of Hearings,**
10 **require a certain expertise and should be under the authority of the**
11 **Planning Department.**

12 **WHEREAS, The City Council further finds as follows:**

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17 **no longer in effect and shall be removed from the City code.**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20 **Prevention and Control Ordinance are no longer in effect since the**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

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

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

5 "§ 1-1-19 HEARING AND APPEAL PROCESS.

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

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

12 "§ 2-3-7 COMPLIANCE; ENFORCEMENT; HEARING AND APPEAL
13 PROCESS.

14 (C) The City Attorney shall seek first to ensure voluntary compliance with
15 the provisions of this Ordinance pursuant to § 2-3-5. A person who violates
16 this Ordinance shall be given fifteen (15) consecutive calendar days notice to
17 correct the matter or request a hearing before the Independent Hearing Officer
18 before fines are imposed. The fifteen day notice shall begin to run on the day
19 the notice is mailed or served in person. The request for hearing shall be
20 submitted to the City Clerk. The hearing shall use the procedures outlined in
21 the IHO Ordinance, ROA 1994, Chapter 2, Article 8, Part 1.

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

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

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

6 "PART 8: INDEPENDENT OFFICE OF HEARINGS

7 § 2-7-8-1 SHORT TITLE.

8 This part may be cited as the IHO Ordinance.

9 § 2-7-8-2 Independent Hearing Office; created

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

12 § 2-7-8-3 City Clerk; powers and duties

13 (A) The City Clerk shall:

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

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

16 (3) oversee the administrative hearings office;

17 (4) assign and distribute the work of the office after considering the

18 knowledge and experience of particular hearing officers, efficiency in the

19 hearing process and potential conflicts of interest;

20 (5) set fees for filing of appeals or requests for hearings under city

21 ordinances or as otherwise provided by law;

22 (6) reject appeals where the office or a board staffed by the office

23 lacks jurisdiction over the appeal or hearings; and

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

25 merits.

26 (B) The City Clerk may work with City Departments and Boards or other

27 governmental entities to conduct hearings on their behalf pursuant to their

28 procedures as provided for by a memorandum of understanding.

29 § 2-7-8-4 HEARING OFFICER QUALIFICATIONS.

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1 A hearing officer shall have a minimum of five years of actual working
2 experience as an attorney, be admitted to practice law in the State of New
3 Mexico, and understand administrative law.

4 § 2-7-8-5 SCOPE.

5 (A) A hearing officer authorized by this ordinance may conduct hearings
6 required by any City ordinance; administrative instruction; or otherwise to be
7 conducted by "a hearing officer," "a city hearing officer," "the hearing officer,"
8 "the city hearing officer," or "the independent office of hearings," including
9 hearings related to rule making.

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

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

14 (2) Liquor license;

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

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

18 (5) Joint Air Quality Control Board Ordinance, ROA 1994, Sections 9-5-1-
19 1 to 99.

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

24 § 2-7-8-6 SELECTION.

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

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

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

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

5 § 2-7-8-7 REQUEST FOR HEARING AND NOTICE OF SETTING.

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

11 (B) The request for hearing or notice of appeal shall be written; identify
12 the parties; state the authority for the request or appeal; identify the action
13 being challenged; state the remedy the person is seeking; and be signed
14 under oath or affirmation attesting to the truth of the information contained
15 therein.

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

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

21 (E) A request for hearing or notice of appeal is not valid until received
22 by the City Clerk and the filing fee has been paid in accordance with ROA
23 1994, § 2-7-8-8 (C)-(D).

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

29 § 2-7-8-8 DISQUALIFICATION.

1 **(A) *Excusal for cause.*** Hearing officers are required to disclose on the
2 record to the parties any matter that could be considered a conflict of interest
3 with the hearing officer’s duty to render fair and impartial decisions. Once
4 such a disclosure has been made, a party to that proceeding may, but are not
5 obligated to, waive such a potential or apparent conflict. If the parties do not
6 waive the potential or apparent conflict, the hearing officer shall recuse
7 himself unless the hearing officer rules that the conflict will not prevent a fair
8 hearing. If the hearing officer recuses himself, the City Clerk shall select an
9 alternate hearing officer and deliver a notice of alternate assignment and
10 resetting to the parties in accordance with ROA 1994, § 2-7-8-8(E).

11 **(B) *Peremptory excusal.*** There shall be no peremptory disqualification of
12 a hearing officer in any proceeding pursuant to this ordinance except as
13 otherwise provided for by applicable law. Each party may peremptorily excuse
14 one personnel hearing officer within ten days of the receipt of the notice of
15 hearing. The peremptory excusal shall be filed with the City Clerk and served
16 on all other parties. Upon receipt of a peremptory excusal, the City Clerk shall
17 select an alternate hearing officer and deliver a notice of alternate assignment
18 and resetting to the parties in accordance with ROA 1994, § 2-7-8-8(E). Except
19 for non-substantive communication involving scheduling or procedure, a
20 party shall not excuse a hearing officer after the hearing has begun or after the
21 hearing officer has performed any discretionary act in the matter.

22 **§ 2-7-8-9 HEARING.**

23 **(A) *Applicability of rules of civil procedure and rules of evidence.*** In the
24 absence of a specific provision of applicable law governing an action, the
25 hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-
26 001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for
27 guidance. No provision of the rules of civil procedure shall be construed to
28 extend or otherwise modify the authority and jurisdiction.

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

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

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

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

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

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

21 **§ 2-7-8-10 APPLICABILITY.**

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

25 **SECTION 4. “Civil Emergencies,”** ROA 1994, Chapter 2, Article 9, Part 1,
26 Section 14 is amended as follows:

27 **“§ 2-9-1-14 ENFORCEMENT**

28 (E) **Notice of Violation.** The City Attorney may issue a Notice of Violation
29 to any person who violates any provision of the anti-price gouging ordinance.

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1 The person may be given an opportunity to respond to the Notice and correct
2 the violation within fifteen working days.

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

11 SECTION 5. “Merit System; Personnel Policy,” ROA 1994, Chapter 3, Article
12 1, Section 25 is amended as follows:

13 “§ 3-1-25 APPEAL FROM SUSPENSIONS, DEMOTION AND DISCHARGE.

14 (A) A nonprobationary employee who has been suspended without pay
15 for more than five days, demoted for disciplinary reasons, or discharged may
16 appeal the discipline to the Personnel Board within fifteen days of the
17 occurrence of the disciplinary decision. The appeal shall be in writing and
18 shall be submitted to the City Clerk with a copy to the employee’s department
19 head.

20 (C) The City Clerk shall refer the appeal to a Personnel Hearing Officer
21 who shall set the matter for an evidentiary hearing. The Hearing Officer shall
22 prepare and submit to the Board and the parties a report containing a
23 summary of the evidence taken at the hearing and proposed findings of
24 fact. The City and the employee may submit exceptions to the Hearings
25 Officer’s report and written argument within the time allowed by the Board’s
26 procedural rules.”

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

29 “§ 4-4-8 DETERMINATION OF EXEMPTION; APPEAL.

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1 The Mayor shall make the determination of whether or not a vendor is exempt
2 from the occupancy tax. In the event the vendor is dissatisfied with any
3 decision of the Mayor with respect to this article, they may appeal the decision
4 to the Independent Hearing Officer pursuant to the provisions of the IHO
5 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

6 § 4-4-9 COLLECTION OF THE TAXES; REPORTING CHANGE IN
7 OWNERSHIP.

8 § 4-4-11 FAILURE TO PAY TAX OR MAKE RETURN; PENALTY;
9 COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.

10 (E) A vendor who disputes the assessment of any occupancy tax or
11 related penalties and interest may, within fifteen working days of the date of
12 the notice from the city that the tax is delinquent, appeal the Mayor's decision
13 to the Independent Hearing Officer as set forth in Chapter 2, Article 7, Part 8."

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

16 "§ 4-5-3 LICENSE TAX.

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

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

27 "§ 4-8-6 DETERMINATION OF EXEMPTION; APPEAL.

28 The Mayor shall make the determination of whether or not a vendor is exempt
29 from the hospitality fee. In the event the vendor is dissatisfied with any

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1 decision of the Mayor with respect to this article, they may appeal the decision
2 to the Independent Hearing Officer pursuant to the provisions of the IHO
3 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

4 § 4-8-8 COLLECTION OF THE FEE; REPORTING CHANGE IN OWNERSHIP.
5 § 4-8-10 FAILURE TO PAY FEE OR MAKE RETURN; PENALTY;
6 COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.

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

12 SECTION 9. "Public Purchases," ROA 1994, Chapter 5, Article 5, Section 24
13 is amended as follows:

14 "§ 5-5-24 DEBARMENT.

15 Debarment and suspension of a contractor, offeror, or bidder is governed by
16 the City's Debarment Ordinance §§ 5-7-1 et seq."

17 SECTION 10. The "Contractor Debarment Ordinance," ROA 1994, Chapter
18 5, Article 7 is repealed in its entirety and the following is enacted in its place:

19 ARTICLE 7: DEBARMENT

20 § 5-7-1 SHORT TITLE.

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

22 § 5-7-2 DEFINITIONS:

23 As used in the Debarment Ordinance, the terms "person," "bidder,"
24 "offeror," and "contractor" include the principals, officers, directors, owners,
25 partners and managers of a person, bidder, offeror or contractor.

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

28 CONTRACTOR. Any person or business that is a party to a contract with
29 the City that is governed by the Public Purchases Ordinance, or that has

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1 obtained or attempted to obtain a contract relating to a Public Works Project.
2 CHIEF PROCUREMENT OFFICER. The City's Chief Procurement Officer, or
3 their designee.

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

6 **§ 5-7-3 AUTHORITY TO SUSPEND OR DEBAR:**

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

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

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

23 **§ 5-7-4 CAUSES FOR DEBARMENT OR SUSPENSION; TIME LIMIT.**

24 (A) A person shall be debarred or suspended within three years of
25 the date the City knows of the facts that constitute cause for debarment or
26 suspension. Causes for debarment or suspension include, but are not limited
27 to:

28 (1) criminal conviction of a bidder, offeror, or contractor for
29 commission of a criminal offense related to:

1 (a) obtaining unlawfully or attempting to obtain
2 unlawfully a public or private contract or subcontract; or

3 (b) unlawful performance of a public or private contract
4 or subcontract;

5 (2) civil judgment against a bidder, offeror, or contractor for a civil
6 violation related to:

7 (a) obtaining unlawfully or attempting to obtain
8 unlawfully a public or private contract or subcontract; or

9 (b) unlawful performance of a public or private contract or
10 subcontract;

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

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

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

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

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

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

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

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1 (b) a history of failure to perform or of unsatisfactory
2 performance of one or more contracts; provided that this failure or
3 unsatisfactory performance has occurred within a reasonable time preceding
4 the decision to impose suspension or debarment; and provided further that
5 failure to perform or unsatisfactory performance caused by acts beyond the
6 control of the bidder, offeror, or contractor shall not be considered to be a
7 basis for suspension or debarment;

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

12 (10) willful violation by a bidder, offeror, or contractor of the
13 provisions of the Public Purchases Ordinance, Chapter 5, Article 5, R.O.A.
14 1994; or

15 (11) previous suspension or debarment or prior finding by any
16 agency of the federal government, the State of New Mexico, any state of the
17 United States, or any local public body of a state in the United States, that the
18 person is otherwise ineligible to receive funds from the agency or
19 government.

20 § 5-7-5 DEBARMENT OR SUSPENSION; NOTICE OF DETERMINATION.

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

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

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

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

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

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

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

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

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

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

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

23 (2) transmitted electronically to the person's last known email
24 address on file within three business days after issuance of the written
25 determination.

26 (C) Failure to request hearing on debarment: If the person fails to deliver
27 a timely written request for a hearing to the Office of the City Clerk in
28 accordance with the provisions of this section, a final determination shall be
29 made by the Chief Procurement Officer or the Director of Municipal

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1 Development or their designee.

2 § 5-7-6 HEARING PROCEDURES.

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

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

8 “§ 6-1-1-12 VARIANCES AND APPEALS

9 (B) Appeal of § 6-1-1-5 (Watering Restrictions), § 6-1-1-6 (Water Waste),
10 and § 6-1-1-7 (Special Permits). Any responsible party may appeal fees for
11 violations of §§ 6-1-1-5, 6-1-1-6, and 6-1-1-7 to the Independent Hearing Officer
12 pursuant to the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article
13 7, Part 8.”

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

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

18 SECTION 14. The “Street Excavation and Barricading Ordinance,” ROA
19 1994, Chapter 6, Article 5, Part 2, Section 29 is amended as follows:

20 “§ 6-5-2-29 APPEALS.

21 (B) Appeal of § 6-5-2-28(E). Any applicant may appeal suspensions or
22 fee assessments to the City Hearing Officer by filing an appeal within fifteen
23 days of receiving a notice of suspension. Procedures regarding the hearing
24 shall be the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2,
25 Article 7, Part 8.”

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

28 “§ 6-7-7 VIOLATIONS OF ORDINANCE.

1 Upon determination by the Mayor that a newsrack has been installed, used or
2 maintained in violation of the provisions of this article, an order to correct the
3 offending condition will be issued to the distributor of the newsrack. Such
4 order shall be telephoned to the distributor and confirmed by mailing a copy
5 of the order by certified mail return receipt requested. The order shall
6 specifically describe the offending condition, suggest actions necessary to
7 correct the conditions and inform the newsrack distributor of the right to
8 appeal. Failure to properly correct the offending conditions within 10 days
9 (excluding Saturdays, Sundays and legal holidays) after the mailing date of the
10 order or to appeal the order within fifteen days after its receipt shall result in
11 the offending newsrack being summarily removed and processed as
12 unclaimed property. If the offending newsrack is not properly identified as to
13 owner under provisions of § 6-7-3(D), it shall be removed immediately and
14 processed as unclaimed property. An impound fee, which shall be measured
15 by the city's cost and expense of impounding, shall be assessed against each
16 newsrack summarily removed. The Mayor shall set the impound-fee formula
17 by rule, which shall be available to the public. The Mayor shall cause
18 inspection to be made of the corrected condition of a newsrack reinstalled
19 after removal under this section. The distributor of the newsrack shall be
20 charged a \$10 inspection fee for each newsrack so inspected. This charge
21 shall be in addition to all other fees and charges required under this article.

22 **§ 6-7-8 APPEALS.**

23 Any person or entity aggrieved by a finding, determination, notice, order or
24 action taken under the provisions of this article may appeal and shall be
25 apprised of his right to appeal to the Independent Hearing Officer. An appeal
26 must be submitted to the City Clerk within fifteen days after receipt of notice
27 of any protested decision or action. Procedures regarding the hearing shall be
28 the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 7,
29 Part 8.”

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

3 “§ 7-3-13 APPEAL PROCEDURE.

4 Any applicant shall have the right to appeal the denial of a parade or public
5 assembly permit to the Independent Hearing Officer. The denied applicant
6 shall make the appeal within fifteen days after receipt of the denial.

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

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

11 “§ 7-5-4 TOWING.

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

13 (1) The date and time the warning sticker was affixed to the
14 vehicle;

15 (2) A statement that pursuant to this article, if the vehicle is not
16 removed within 24 hours of the time the sticker is affixed, it may be taken into
17 custody and stored at the owner's expense;

18 (3) A statement that, if the vehicle is towed pursuant to this
19 article, the owner will have the opportunity to appeal said action at a hearing,
20 and a written notice of the procedure for said hearing will be mailed to the
21 owner's address as provided by State Motor Vehicle Division files or the files
22 of the appropriate motor vehicle regulatory agency of another state;

23 (4) The location and telephone number where additional
24 information may be obtained; and

25 (5) The identity of the affixing person.

26 (C) After a vehicle is taken into custody and stored pursuant to this
27 article, the affixing department shall provide notice of possession to the owner
28 of the vehicle by written notice. The vehicle owner may, within fifteen days of
29 the date of the notice, appeal the action to the Independent Hearing Officer. If

1 a hearing is requested, procedures outlined in the IHO Ordinance, ROA 1994,
2 Chapter 2, Article 7, Part 8, apply.

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

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

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

9 "§ 7-10-99 PENALTY.

10 A person who violates any provision of this Article shall be subject to the
11 penalty provisions of § 1-1-99 ROA 1994.

12 SECTION 21. "Prostitution Vehicle Forfeiture," ROA 1994, Chapter 7, Article
13 14 is repealed in its entirety.

14 SECTION 22. The Traffic Code, "Stopping, Standing and Parking," ROA
15 1994, Chapter 8, Article 5, Part 2 is amended as follows:

16 "§ 8-5-2-10 HEARING.

17 (A) Hearing Officer and Scheduling. Hearings, if requested within the
18 seven consecutive day period set forth in §§ 8-5-2-3(D) and 8-5-2-9(B), shall be
19 conducted by the City Hearing Officer, in accordance with the IHO Ordinance,
20 ROA 1994, Chapter 2, Article 7, Part 8.

21 (B) Scope, Burden of Proof and Procedures. The party requesting the
22 hearing bears the burden of establishing that such person has the right to
23 possession of the vehicle. The City bears the burden of establishing the
24 validity of the proposed or completed impoundment. The standard of proof is
25 a preponderance of the evidence. Procedures regarding the hearing shall be
26 the procedures outlined in the IHO Ordinance, ROA 1994, Chapter 2, Article 7,
27 Part 8.

28 (C) Pre-impoundment Hearings. Requests for a pre-impoundment
29 hearing shall be filed with the City Clerk. The City Clerk shall notify the City

1 department responsible for impounding the motor vehicle and the hearing
2 officer that the request for hearing has been filed. At a hearing prior to the
3 impoundment of a vehicle allegedly parked in violation of §§ 8-5-2-1 et seq.,
4 the hearing officer shall determine whether the vehicle is parked in violation of
5 such sections. If the hearing officer so finds, the hearing officer shall so notify
6 the Mayor or the Chief and shall order the vehicle removed and impounded
7 and assess the impoundment charges thereof against the vehicle.

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

24 (E) Failure to Request Hearing. Failure of any person to request an
25 impoundment hearing within the time provided or attend any such hearing
26 constitutes a waiver of the right to such hearing.

27 § 8-5-2-12 DISPOSITION OF MOTOR VEHICLES.

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1 (A) The Mayor may dispose of impounded motor vehicles by following
2 the procedures provided by state law for the disposal of unclaimed property or
3 as otherwise provided by law.”

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

6 “§ 9-1-4-6 APPEAL.

7 Upon delivery of a Cease and Desist Order and Notice of Violation, the
8 business has fifteen days to appeal to a hearing officer in accordance with the
9 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.”

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

13 “§ 9-2-7-1 INSPECTIONS AND HEARING PROCESS.

14 (H) Appeal. A Person whose application for a Permit or Permit renewal
15 has been approved on condition or denied, and a Permit Holder whose Permit
16 has been suspended or revoked, may submit to the City Clerk a written
17 request for a hearing, provided that the written request is received by the City
18 Clerk within fifteen days of the applicant's receipt of the written notice of
19 denial or conditional approval. The hearing shall be conducted in accordance
20 with the provisions in the IHO Ordinance. ROA 1994, Chapter 2, Article 7, Part
21 8.

22 (I)

23 (J)

24 (K)

25 (L)”

26 SECTION 25. The “Albuquerque Alarm System Ordinance,” ROA 1994,
27 Chapter 9, Article 3 is amended as follows:

28 “§ 9-3-13 EXCESSIVE FALSE ALARMS, SERVICE FEES.

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

8 § 9-3-14 APPEALS, HEARINGS.

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

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

20 (C) The decision of the False Alarm Reduction Unit supervisor may be
21 appealed to an administrative Hearing Officer. The Hearing Officer shall
22 conduct a hearing in accordance with the provisions in the IHO Ordinance,
23 ROA 1994, Chapter 2, Article 7, Part 8.

24 § 9-3-15 SUSPENSION AND REVOCATION OF ALARM BUSINESS PERMITS.

25 (B) If the False Alarm Reduction Unit supervisor determines that any
26 alarm business permit holder has violated this section, the False Alarm
27 Reduction Unit supervisor shall send a notice of intent to revoke the alarm
28 business permit. After the alarm business permit holder receives the notice of
29 intent to revoke the alarm business permit, the holder may admit fault and

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1 surrender the alarm business permit within 30 days or demand a hearing. The
2 demand for hearing shall be in writing and mailed to the City Clerk within
3 fifteen days of receipt of the notice of intent to revoke.

4 (C) The Hearing Officer shall conduct a hearing in accordance with the
5 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

6 The Hearing Officer may:

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

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

13 "§ 9-6-1-8 COMPLIANCE PROCEDURES.

14 (H) Hearings. The hearings provided for in this ordinance shall be
15 conducted by the Independent Hearing Officer in accordance with the
16 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

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

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

23 § 9-6-1-9 EXAMINATION AND CONDEMNATION OF FOOD.

24 Samples of food, drink, and other substances may be taken and examined by
25 the enforcement authority as often as necessary to determine freedom from
26 unwholesomeness, adulteration or misbranding. Samples submitted for
27 laboratory analysis shall be submitted to a laboratory approved by and under
28 cognizance of a federal or state agency. The enforcement authority may, upon
29 written notice to the owner or person in charge, place a hold order on any food

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1 which he determines or has probable cause to believe to be unwholesome or
2 otherwise adulterated or misbranded. The enforcement authority shall tag,
3 label or otherwise identify any food subject to the hold order and permit it to
4 be suitably stored. It shall be unlawful for any person to remove or alter a
5 hold order, notice or tag placed on the food by the enforcement authority, and
6 neither such food nor the containers thereof shall be relabeled, repacked,
7 reprocessed, altered, disposed of, or destroyed without permission of the
8 enforcement authority, except on order by a court of competent jurisdiction.
9 The hold order shall state that a request for a hearing may be filed within
10 fifteen days and that if no hearing is requested the food shall be destroyed at
11 the owner's expense. After the owner or person in charge has had a hearing
12 as requested, and on the basis of evidence produced at such hearing, or on
13 the basis of the enforcement authority's examination in the event a written
14 request for a hearing is not received, the hold order may be vacated or the
15 owner or person in charge of the food may be directed by written order to
16 denature or destroy such food or bring it into compliance with the provisions
17 of §§ 9-6-1-1 et seq. An order to destroy or denature food shall be stayed if the
18 order is appealed to a court of competent jurisdiction within three days.

19 § 9-6-1-13 FEES.

20 (B) Temporary Fees. The enforcement authority is authorized to collect
21 the following fees until such time as they are adjusted as outlined in § 9-6-1-
22 18(A). These fees are for the purpose of paying the costs reasonably incurred
23 in administering and enforcing the Food Sanitation Ordinance.

24 (10) Payment of Fees.

25 (b) In the event that any person fails to pay the annual fee by the due
26 date, or remits an amount less than the correct amount of the fee due, the
27 enforcement authority shall determine the amount of the fee due using such
28 statement or other available information. The enforcement authority shall
29 thereupon give written notice to the permit holder of the amount due, which

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1 amount shall be paid within five working days of receipt of such notice. Any
2 party aggrieved by the enforcement authority's determination as to the amount
3 due may request a hearing pursuant to the provisions in the IHO Ordinance,
4 ROA 1994, Chapter 2, Article 7, Part 8.”

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

7 “§ 9-6-2-10 COMPLIANCE PROCEDURES.

8 (C) Suspension of Permits. Permits may be suspended by the
9 enforcement authority for failure of the holder to comply with the requirements
10 of §§ 9-6-2-1 et seq. or of other applicable laws. An establishment's operating
11 permit shall be immediately suspended in lieu of a third downgrading during
12 any 36-month period under the same business management. Whenever a
13 permit holder or operator has failed to comply with any notice issued under
14 the provisions of this section, the permit holder or operator shall be notified in
15 writing that the permit is, upon service of this notice, immediately suspended,
16 and that an opportunity for a hearing will be provided if a written request for
17 hearing is filed with the City Clerk’s office within fifteen days.

18 Notwithstanding the other provisions of §§ 9-6-2-1 et seq., whenever the
19 enforcement authority finds an imminent health hazard or other conditions in
20 the operation of a food establishment which, in his judgment, constitute a
21 substantial hazard to the public health, he may without any prior warning,
22 notice, or hearing, issue a written notice to the permit holder or operator citing
23 such condition, specifying the corrective action to be taken, and specifying
24 the time period within which such action shall be taken; and, if deemed
25 necessary, such order shall state that the permit is immediately suspended
26 and all operations are to be immediately discontinued. Any person to whom
27 such an order is issued shall comply immediately therewith, and shall be
28 granted a hearing upon written request to the City Clerk in accordance with
29 the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

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1 (E) Revocation of Permits. For three or more suspensions within a 60-
2 month period under the same business management; for failure of an
3 establishment which has received a Grade of "Unsatisfactory" to meet the
4 requirements of an "Approved" Grade within the required time period; for the
5 fourth downgrading or second suspension in lieu of downgrading within any
6 36-month period under the same business management; for refusal of entry
7 after proper identification has been tendered; or for interference with the
8 enforcement authority in the performance of his duties, the permit may be
9 revoked after an opportunity for a hearing has been provided by the
10 enforcement authority. Prior to such action, the enforcement authority shall
11 notify the permit holder in writing, stating the reasons for which the permit is
12 subject to revocation and advising that the permit shall be revoked at the end
13 of five working days following the service of such notice, unless a request for
14 a hearing is filed. A permit may be suspended for cause pending its revocation
15 or a hearing relative thereto. A permit may be revoked after a hearing in lieu of
16 a third suspension within a 60-month period.

17 (F) Hearings. The hearings provided for in this division shall be
18 conducted by the Independent Hearing Officer in accordance with the
19 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

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

23 § 9-6-2-11 EXAMINATION AND CONDEMNATION OF FOOD.

24 Samples of food, drink, and other substances may be taken and examined by
25 the enforcement authority as often as necessary to determine freedom from
26 unwholesomeness, adulteration or mislabeling. Samples submitted for
27 laboratory analysis shall be submitted to a laboratory approved by and under
28 cognizance of a federal or state agency. The enforcement authority may, upon
29 written notice to the owner or person in charge, place a hold order on any food

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1 which he determines or has probable cause to believe to be unwholesome or
2 otherwise adulterated or mislabeled. The enforcement authority shall tag, label
3 or otherwise identify any food subject to the hold order and permit it to be
4 suitably stored unless storage is not possible without risk to the public health,
5 in which case immediate destruction shall be ordered and accomplished. It
6 shall be unlawful for any person to remove or alter a hold order, notice or tag
7 placed on the food by the enforcement authority, and neither such food nor
8 the containers thereof shall be relabeled, repacked, reprocessed, altered,
9 disposed of, or destroyed without permission of the enforcement authority,
10 except on order by a court of competent jurisdiction. The hold order shall
11 state that a request for a hearing may be filed within fifteen days and that if no
12 hearing is requested the food shall be destroyed at the owner's expense. A
13 hearing shall be held in accordance with the provisions in the IHO Ordinance,
14 ROA 1994, Chapter 2, Article 7, Part 8. After the owner or person in charge has
15 had a hearing as requested, and on the basis of the enforcement authority's
16 examination in the event a written request for a hearing is not received, the
17 hold order may be vacated or the owner or person in charge of the food may
18 be directed by written order to denature or destroy such food or bring it into
19 compliance with the provisions of §§ 9-6-2-1 et seq. or shall be stayed if the
20 order is appealed to a court of competent jurisdiction within three days.

21 § 9-6-2-15 INSPECTION AND TRANSFER FEES.

22 (D) Payment of Fees.

23 (2) In the event that any person fails to pay the inspection fee or transfer
24 fee by the due date, or remits an amount less than the correct amount of
25 inspection fee, the Mayor shall determine the amount of the inspection fee
26 due, using such statement or other available information. The Mayor shall
27 thereupon give written notice to such person of the amount due, which
28 amount shall be paid within five working days of receipt of such notice. Any
29 such person may protest the amount so determined by the Mayor within

1 fifteen days of receipt of such notice pursuant to the provisions in the IHO
2 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

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

8 (6) In addition to the remedies provided above, the Mayor may suspend
9 or revoke any permit issued pursuant to §§ 9-6-2-1 et seq. for failure to pay
10 that inspection fee including any late charges. Upon suspension or revocation
11 of any permit, permit holder may appeal suspension or revocation pursuant to
12 the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.
13 Any permit that has been suspended or revoked for nonpayment of the
14 inspection fee including any late charges shall be reinstated upon payment of
15 the inspection fee including any late charges.”

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

18 “§ 9-6-3-2 PERMITS.

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

25 SECTION 29. The “Food and Drink Vending Machine Ordinance,” ROA
26 1994, Chapter 9, Article 6, Part 6, Section 3 is amended as follows:

27 “§ 9-6-6-3 OPERATOR'S PERMITS ISSUANCE, SUSPENSION,
28 REVOCATION AND REINSTATEMENT.

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

1 (1) An operator's permit may be temporarily suspended or revoked by the
2 Health Authority upon violation by the permit holder of any of the provisions
3 of §§ 9-6-6-1 et seq.”

4 **SECTION 30. The “Albuquerque Weed and Anti-Litter Ordinance,” ROA**
5 **1994, Chapter 9, Article 8 is amended as follows:**

6 **“§ 9-8-28 APPEAL PROCEDURE ADMINISTRATIVE HEARING.**

7 The owner may appeal the determination of the need for weed or litter removal
8 to the City Hearing Officer by filing an appeal within fifteen days of the date of
9 service of the notice to remove. Such request shall be made in writing and
10 filed in the Office of the City Clerk. The appeal shall be heard in accordance
11 with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part
12 8.

13 **§ 9-8-29**

14 **§ 9-8-30**

15 **§ 9-8-31”**

16 **SECTION 31. The “Noise Control Ordinance,” ROA 1994, Chapter 9, Article**
17 **9 is amended as follows:**

18 **“§ 9-9-6 VARIANCES.**

19 **(C) Any person seeking a variance shall file a petition for variance with**
20 **the City Clerk’s Office. The hearing shall be conducted after notice has been**
21 **provided in accordance with this section and to make the final decision**
22 **regarding the granting of the variance. The Hearing Officer shall conduct the**
23 **hearing and accept documentary and testimonial evidence in accordance with**
24 **accepted administrative hearing procedures.**

25 **§ 9-9-11 MAKING VIOLATIONS OF THE NOISE ORDINANCE CIVIL**
26 **VIOLATIONS; PROVIDING A HEARING; ADDITIONAL REMEDIES;**
27 **INJUNCTIONS.**

28 **(C) Any person who is issued a Notice of Violation may request that a**
29 **hearing be scheduled by the city hearing officer by submitting a request for a**

1 hearing with the City Clerk’s Office. The hearing shall be held in accordance
2 with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part
3 8.”

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

6 “§ 9-10-1-11 COLLECTION FEES.

7 (G) Discontinuance of Service; Hearing.

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

12 (3) The property owner must request in writing that a hearing be held
13 and such request must be received by the City Clerk within fifteen days of
14 receipt of notice of termination of service. The hearing shall be held in
15 accordance with the provisions in the IHO, ROA 1994, Chapter 2, Article 7, Part
16 8. The Hearing Officer may affirm, overrule, or modify the decision to terminate
17 the services. The decision of the Hearing Officer shall be final. In the event a
18 hearing is requested, the services shall not be terminated until and in
19 accordance with the decision of the Hearing Officer.”

20 SECTION 33. The “Syringe Exchange Facility Location Ordinance,” ROA
21 1994, Chapter 9, Article 15, Section 7 is amended as follows:

22 “§ 9-15-7 PROCEDURE FOR APPROVAL OR DENIAL OF PERMIT.

23 (A) Within 45 days of receipt of the application for a permit, the Mayor
24 shall grant or deny the permit. If the Mayor affirmatively determines, upon
25 inquiry and examination, that the requirements of this article have been met,
26 the Mayor shall grant the permit. If the Mayor determines, upon inquiry and
27 examination, that any of the requirements of this article have not been met, the
28 Mayor shall notify the applicant that the application for the permit has been
29 denied and shall state the findings of fact upon which the denial is based. The

1 denial shall not become effective for 20 days during which time the applicant
2 may petition for reconsideration and shall be entitled to a hearing before the
3 City Hearing Officer.

4 (B) A request for a hearing shall be made by the applicant within fifteen
5 days of receipt of notice of denial. The hearing shall be held in accordance
6 with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part
7 8.”

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

10 “§ 9-17-5 DANGEROUS DOG.

11 (B) Dangerous dog response.

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

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

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

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

29 (4) Subsequent attack by dangerous dogs. If a dog previously

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1 determined to be a dangerous dog commits a subsequent unprovoked attack
2 on a person or companion animal, the Department shall immediately seek to
3 obtain a warrant from a court of competent jurisdiction to seize the dog or
4 seize the dog with the consent of the owner. Such dog shall remain in the
5 custody of the Department pending adjudication and shall be handled in the
6 ordinary manner under the Humane and Ethical Animal Rules and Treatment
7 Ordinance. If the owner does not request a hearing within fifteen days, or if the
8 Hearing Officer upholds the Department's determination that the dog
9 committed a subsequent unprovoked attack after having previously been
10 deemed dangerous, such dog shall become the property of the Department
11 and shall be handled in the ordinary manner under the Humane and Ethical
12 Animal Rules and Treatment Ordinance.

13 **§ 9-17-7 HEARINGS.**

14 Any person aggrieved by this article may file a Notice of Appeal on a form
15 obtained from the Department or the City Clerk. The Notice of Appeal shall be
16 filed with the City Clerk within fifteen days from the date of the aggrieving
17 action. The hearing shall be held in accordance with the provisions in the IHO
18 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.”

19 **SECTION 35. “Pigeon Nuisance Abatement,”** ROA 1994, Chapter 9, Article
20 18, Section 3 is amended as follows:

21 **“§ 9-18-3 MAKING THE FEEDING OF FERAL PIGEONS A CIVIL VIOLATION;
22 PROVIDING A HEARING.**

23 (F) Any person who is fined for violating this section may request a
24 hearing by making a written request to the City Clerk within fifteen days of the
25 notice of violation. The hearing shall be held in accordance with the
26 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.”

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

29 **§ 10-3-5-1 TEMPORARY SUSPENSION OF PERMITS.**

1 **Permits shall be temporarily suspended by the Enforcement Authority for**
2 **failure of the holder to comply with the requirements of this article or other**
3 **applicable laws, ordinances or regulations. Whenever a permit holder or**
4 **operator has failed to comply with any of the requirements of this article, the**
5 **permit holder or operator shall be notified in writing which identifies or**
6 **references such condition; specifies the time period within which such**
7 **condition shall be brought into compliance, if any period to cure is allowed;**
8 **and states that failure to comply with any notice issued in accordance with the**
9 **provisions of this article may result in immediate suspension of the permit.**
10 **Notwithstanding the other provisions of this article, whenever the**
11 **Enforcement Authority finds a condition in the operation of a swimming pool**
12 **which constitutes an immediate hazard to the public health, welfare or safety,**
13 **the Enforcement Authority may without prior warning, notice, or hearing, issue**
14 **a written notice to the permit holder or operator citing such condition and**
15 **stating that the permit is immediately suspended and that all swimming or**
16 **bathing of any kind is to be immediately discontinued. An opportunity for an**
17 **administrative hearing regarding such action will be provided if a written**
18 **request for a hearing is delivered to the City Clerk within fifteen days of**
19 **suspension of the permit. Any person to whom notice of suspension is given**
20 **shall comply immediately therewith. A sign, approved by the Enforcement**
21 **Authority and in a location designated by the Enforcement Authority, shall be**
22 **displayed stating that the pool is closed for use.**

23 **§ 10-3-5-4 REVOCATION OF PERMIT.**

24 **If serious or repeated violations of any of the requirements of this article**
25 **occur, or if three or more suspensions occur which require reinspection for**
26 **permit reinstatement within any 12-month period, or if the permit has been**
27 **obtained through nondisclosure, misrepresentation or misstatement of a**
28 **material fact, or if the owner or the person in charge interferes with the**
29 **Enforcement Authority in the performance of his or her duties, then the permit**

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1 may be revoked after an opportunity for a hearing has been provided by the
2 Enforcement Authority. Prior to such revocation, the Enforcement Authority
3 shall notify the permit holder in writing stating the reason the permit is subject
4 to revocation and advising that the permit shall be revoked at the end of five
5 working days following service of such notice, unless a request for a hearing
6 is delivered to the City Clerk by the permit holder within fifteen days. A permit
7 may be suspended pending revocation or pending the holding of an
8 administrative hearing.

9 § 10-3-5-5 HEARINGS.

10 The hearing shall be held in accordance with the provisions in the IHO
11 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.”

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

14 “§ 11-5-16 SUSPENSION OR REVOCATION OF PERMITS.

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

21 (E) The Department may permanently revoke a permit following service
22 of a notice of revocation unless a request for a hearing is filed with the City
23 Clerk’s office within fifteen days from receipt of notice.

24 (F) The hearings provided for in this section shall be conducted by the
25 Independent Hearing Officer in accordance with the provisions in the IHO
26 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.”

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

29 “§ 13-3-1-11 AUTHORIZATION OR DENIAL OF PERMIT.

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1 The Mayor shall, within ten calendar days of receipt of the application for
2 permit, grant or deny the permit. If the Mayor affirmatively determines, upon
3 the basis of a review of the application, that the requirements have been met,
4 he shall grant the permit. If the Mayor determines, upon the basis of a review
5 of the application, that any of the requirements have not been met, the Mayor
6 shall notify the applicant that the application for the permit has been denied
7 and shall state the reasons upon which the denial is based. The denial of a
8 permit may be appealed to a City Hearing Officer by filing a written notice of
9 appeal with the City Clerk within fifteen days of the denial's issuance. A
10 hearing shall be held in accordance with the provisions in the IHO Ordinance,
11 ROA 1994, Chapter 2, Article 7, Part 8.

12 **§ 13-3-1-98 VIOLATIONS; SUSPENSIONS AND REVOCATION OF PERMIT;
13 HEARING.**

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

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

24 **(C) When a hearing is requested pursuant to division (A) above, the**
25 **hearing shall be held in accordance with the provisions in the IHO Ordinance,**
26 **ROA 1994, Chapter 2, Article 7, Part 8."**

27 **SECTION 39. The "Old Town Solicitations Ordinance," ROA 1994, Chapter**
28 **13, Article 3, Part 2 is amended as follows:**

29 **"§ 13-3-2-11 PROCEDURE FOR AUTHORIZATION OR DENIAL OF PERMIT.**

1 The Mayor shall, within 45 calendar days of receipt of the application for
2 permit, grant or deny the permit. If the Mayor affirmatively determines, upon
3 inquiry and examination, that the requirements have been met, he shall grant
4 the permit. If the Mayor determines, upon inquiry and examination, that any of
5 the requirements have not been met, the Mayor shall notify the applicant that
6 the application for the permit has been denied and shall state the findings of
7 fact upon which the denial is based. The denial of a permit may be appealed
8 to a City Hearing Officer by filing a written notice of appeal with the City Clerk
9 within fifteen days of the denial's issuance; the hearing shall be held in
10 accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2,
11 Article 7, Part 8.

12 § 13-3-2-98 VIOLATIONS; SUSPENSION AND REVOCATION OF PERMIT;
13 HEARING.

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

15 (3) Conducted solicitations in an unlawful manner or in such a way as
16 to constitute a menace to the health or safety of the public; or in a manner that
17 is not conducive to the overall welfare and promotion of the Old Town HPO 5,
18 the Mayor shall give the vendor written notice by certified mail, return receipt
19 requested, that the Mayor intends to proceed to suspend or revoke the permit
20 unless the vendor requests a hearing by a City Hearing Officer. Such request
21 shall be made in writing and filed in the office of the City Clerk within fifteen
22 days from the day that the vendor receives the notice of the proposed action.
23 The notice shall contain a statement of the facts upon which the Mayor has
24 acted. A suspension of a permit shall not exceed 90 calendar days.

25 (C) When a hearing is requested pursuant to division (A) above, the
26 hearing shall be held in accordance with the provisions in the IHO Ordinance,
27 ROA 1994, Chapter 2, Article 7, Part 8.”

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

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1 **“§ 13-3-3-6 DENIAL OR REVOCATION OF LICENSE-RIGHT OF HEARING.**

2 **(B) The owner shall be given notice of such denial, suspension, or**
3 **revocation in writing by personal service or certified mail, addressed to the**
4 **place of business listed on the application. Such notice shall contain a**
5 **statement of the reasons for and/or conditions of the denial, suspension, or**
6 **revocation, the date when the denial, suspension, or revocation shall take**
7 **effect, which shall not be less than ten working days from the date the notice**
8 **was mailed or served, and notify the permit holder that he may appeal the**
9 **decision by filing with the City Clerk a written request for hearing, which must**
10 **be received by the City Clerk within fifteen days of the notice of denial.**

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

19 **(D) The hearing shall be conducted in accordance with the provisions in**
20 **the Independent Hearing Office Ordinance §§2-7-8-1 et seq.”**

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

24 **“§ 13-6-10 NOTICE OF VIOLATION; NOTICE OF HEARING; HEARINGS;**
25 **CONTINUANCE; ORDER; PENALTIES.**

26 **(A) Notice of violation. If a property unit enforcement official reasonably**
27 **believes that a pawnbroker, precious material dealer, secondhand retailer, or**
28 **automated kiosk has violated any one or more provisions of this article, such**
29 **official shall serve written notice upon the same of the alleged violation (the**

1 "notice of violation"). The notice requirement is satisfied if personal service of
2 same is had upon the pawnbroker, precious material dealer, secondhand
3 retailer's designated agent or is posted in a conspicuous place upon the
4 pawnbroker, precious material dealer, or secondhand retailer's place of
5 business. A notice of violation issued to an automated kiosk must be
6 electronically mailed to the automated kiosk's designated agent.

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

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

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

20 (1) Hearing. The hearing will be conducted in accordance with the
21 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

22 SECTION 42. "Professional Fundraisers," ROA 1994, Chapter 13, Article 10,
23 Section 9 is amended as follows:

24 "§ 13-10-9 DENIAL AND REVOCATION OF CERTIFICATE OF
25 REGISTRATION; CEASE AND DESIST ORDER; APPEALS.

26 (A) If a professional fund raiser has made application for a license under
27 this article and the Mayor has denied the license pursuant to § 13-10-4, the
28 applicant may appeal the decision by filing with the City Clerk a written

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1 request for hearing setting forth reasons for the appeal. The hearing request
2 must be received within fifteen days of the notification of denial of the license.

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

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

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

19 “§ 13-11-8 PROCEDURE FOR APPROVAL OR DENIAL OF PERMIT.

20 (A) Within 45 days of receipt of the application for a permit, the Mayor
21 shall grant or deny the permit. If the Mayor affirmatively determines, upon
22 inquiry and examination that the requirements of this article have been met, he
23 shall grant the permit. If the Mayor determines, upon inquiry and examination,
24 that any of the requirements of this article have not been met, the Mayor shall
25 notify the applicant that the application for the permit has been denied and
26 shall state the findings of fact upon which the denial is based. The denial
27 shall not become effective for 20 days during which time the applicant may
28 within fifteen days from receipt of the denial, petition for reconsideration to
29 the City Clerk and shall be entitled to a hearing by the City Hearing Officer, as

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1 defined by the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8. The
2 state shall be notified of any such hearing.”

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

5 “§ 13-15-14 APPEAL.

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

12 (B) An appeal shall be heard by a hearing officer in accordance with the
13 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.”

14 SECTION 45. The “Uniform Housing Code,” ROA 1994, Chapter 14, Article
15 3, Part 5 is amended as follows:

16 “§ 14-3-5-2 ADMINISTRATIVE HEARING PROCEDURE.

17 The City shall designate an Independent Hearing Officer to provide for final
18 interpretation of the provisions of this code and to hear appeals provided for
19 herein. Appeals shall be heard in accordance with the provisions in the IHO
20 Ordinance, Chapter 2, Article 7, Part 8.

21 § 14-3-5-3 NOTICES AND ORDERS OF THE DEPARTMENT.

22 (A) General.

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

29 (d) Statements advising:

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1 1. That any person having any title or legal interest in the
2 building may appeal from the notice and order or any action of the
3 Department, excluding demolition, to the City Clerk’s Office, provided the
4 appeal is made in writing as provided in this code, and filed with the City
5 Clerk’s Office within fifteen days of service of notice and order, and that failure
6 to timely appeal the notice and order shall result in the order becoming
7 effective;

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

12 § 14-3-5-4 APPEAL.

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

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

27 (C) Effect of Failure to Appeal. Failure of any person to file an appeal
28 in accordance with the provisions herein shall constitute a waiver of their right

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1 to an administrative hearing and adjudication of the notice and order or to any
2 portion thereof.

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

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

8 **§ 14-3-5-5 PROCEDURES FOR CONDUCT OF HEARING APPEALS.**

9 Appeals shall be heard in accordance with the provisions in the IHO
10 Ordinance, Chapter 2, Article 7, Part 8.

11 **§ 14-3-5-8 REQUESTED INSPECTIONS; FEE.**

12 (C) A person may appeal the imposition of a re-inspection fee to the
13 code in writing within fifteen days to the City Clerk's office.

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

15 (D) An owner of a residential rental property who fails to comply with
16 any provision of this subsection is responsible for a civil infraction and shall
17 be assessed a civil penalty of \$500, plus an additional \$100 for each month
18 after the date of the original violation until compliance occurs. The City shall
19 serve notice of any assessed civil penalty upon the owner by mailing such
20 notice to the address of record maintained by the County Clerk or otherwise
21 known to the Department. Any person served with a notice may appeal such
22 notice to the City Clerk in writing within fifteen days pursuant to the
23 procedures contained in § 14-3-5-3."

24 **SECTION 46. The "Dilapidated Commercial Buildings and Properties**
25 **Ordinance," ROA 1994, Chapter 14, Article 20 is amended as follows:**

26 **"§ 14-20-8 APPEAL.**

27 (A) General.

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1 (3) Scheduling and noticing appeal for hearing. The Office of
2 Administrative Hearings shall schedule the hearing pursuant to the provisions
3 of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

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

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

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

13 § 14-20-9 PROCEDURES FOR CONDUCT OF HEARING APPEALS.

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

16 SECTION 47. The “Solar Permit Ordinance,” ROA 1994, Chapter 14, Article
17 11 is amended as follows:

18 “§ 14-11-6 CREATION, LIMITATION OF SOLAR RIGHTS IN CITY.

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

21 (2) Voidance of all or part of a permit for solar rights by the Zoning
22 Hearing Examiner, as specified in § 14-11-7, based on:

23 § 14-11-7 PERMITS FOR SOLAR RIGHTS.

24 (B) *Hearing and Decision.*

25 (1) A duly filed application for a permit for solar rights shall be decided,
26 upon the record after a hearing, by the Zoning Hearing Examiner,

27 (5) A written statement giving the name and address of the person
28 making the appearance, signed by him or by his agent, and filed with the
29 Zoning Hearing Examiner, constitutes appearance of record. The parties to a

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1 hearing shall be any of the following persons who has entered an appearance
2 of record either prior to commencement of the hearing or when permitted by
3 the Zoning Hearing Examiner:

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

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

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

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

18 (8) Prior to making a decision, the Zoning Hearing Examiner shall
19 neither:

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

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

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

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

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

7 (11) The Zoning Hearing Examiner shall, when approving a permit for
8 solar rights, limit the solar rights spatially and temporally as necessary to
9 meet the stated criteria for granting such permits.

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

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

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

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

23 (b) Will be of more value to the public welfare than the
24 precluded enjoyment of present use or prospective use of other sites which
25 would be precluded by the permit. For the purpose of this division (b), *PUBLIC*
26 *WELFARE* means the conservation of scarce fuels and the allowance of an
27 undertaking which would not otherwise be viable.

28 (2) The beneficial use of a solar right which would permit
29 radiation

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

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

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

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

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

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

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

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

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

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1 **§ 14-11-8 RECORDING SOLAR RIGHTS.**

2 **(C) The Mayor shall record with the County Clerk any permit for**
3 **solar rights or voidance of any permit for solar rights granted by the**
4 **City. Filing shall be no sooner than 15 days after the Zoning Hearing**
5 **Examiner’s decision; filing shall be no later than 25 days after the hearing**
6 **officer’s decision unless a Writ of *Certiorari* has been filed and the Mayor has**
7 **been so informed. The document filed shall be signed by the Zoning Hearing**
8 **Examiner; the document shall be titled "Solar Right Declaration" and shall**
9 **contain at least the following:"**

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

11 **"ZONING HEARING EXAMINER.**

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

17 **SECTION 49. SEVERABILITY CLAUSE. If any section, paragraph, sentence,**
18 **clause, word, or phrase of this ordinance is for any reason held to be invalid**
19 **or unenforceable by any court of competent jurisdiction, such decision shall**
20 **not affect the validity of the remaining provisions of this ordinance. The**
21 **Council hereby declares that it would have passed this ordinance and each**
22 **section, paragraph, sentence, clause, word, or phrase thereof irrespective of**
23 **any provisions being declared unconstitutional or otherwise invalid.**

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

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

1 PASSED AND ADOPTED THIS 1st DAY OF May, 2023
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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Pat Davis, President
10 City Council

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14 APPROVED THIS 18 DAY OF May, 2023

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18 Bill No. C/S O-23-68

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Timothy M. Keller, Mayor
23 City of Albuquerque

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25
26 ATTEST:

27 

28

Ethan Watson, City Clerk
29

[+Bracketed/Underscored Material+] - New
[-Bracketed/Strikethrough Material-] - Deletion