



City of Albuquerque Office of the City Clerk

Timothy M. Keller, Mayor

Interoffice Memorandum

Marh 18, 2025

TO: Dr. Samantha Sengel, Chief Administrative Officer
Ethan Watson, City Clerk

FROM: Christopher Peck, Public Hearing Officer

Initial

SUBJECT: Rulemaking for the Rules Regulating the City of Albuquerque Independent Hearing Office (IHO)

In accordance with §2-15-1 *et seq.* ROA 1994, the City's Ordinance controlling rulemaking procedures, the Office of the City Clerk (Clerk) posted notice and conducted a Rulemaking Hearing for public comment on the proposed implementation of Rules Regulating the City of Albuquerque Independent Hearing Office (Rules). The Office of the City Clerk posted notice for five consecutive weeks and held two in-person public hearings.

From February 6, 2025, through February 20, 2025, and February 20, 2025, through March 13, 2025, the public was notified of the opportunity to review the proposed rules, by notice on the City Clerk's rulemaking webpage and by posting at City Hall and Plaza del Sol. The first public hearing was held on February 20, 2025, at 8:30 am. The Second public hearing was held on March 13, 2025, at 9:00 am.

Background

Pursuant to ROA 1994, § 2-7-8-3(A)(1), "The City Clerk shall adopt and promulgate rules pertaining to administrative hearings." The proposed rules will ensure fairness and consistency, enhance transparency, build trust, promote efficiency, facilitate compliance, and protect the rights of the parties.

General Summary of Public Comment and Recommendations

A public hearing was conducted on Thursday, February 20, 2025. There was no attendance from the public at the hearing. Andrew Coon, Managing City Attorney, and Amanda Morefield, Code Enforcement Supervisor both appeared at the hearing and requested the Office of the City Clerk hold a second hearing to allow additional time for comment from City Departments. In response to the request from Mr. Coon and Ms. Morefield, the City Clerk's Office agreed to hold a second hearing regarding the proposed rules. That hearing was scheduled for March 13, 2025, at 9:00 am.

The City Clerk’s Office received one written public comment from Gilliam Kerley (member of the public) on February 19, 2025, prior to the first hearing. Mr. Kerley submitted the same comment again on March 12, 2025, prior to the second hearing. The City Clerk’s Office received three comments in writing on March 13, 2025, from the City’s Department of Municipal Development’s Automated Speed Enforcement Program (“ASE Program”), the Planning Department’s ADAPT Program (“Adapt Program”), and the Planning Department’s Code Enforcement Division (“Code Enforcement”). The written comments are attached to this report.

Based on general comment, it was clear that language amending **Section 2.4** was needed in order to make clear that any provision in the law more specific to the hearing type controls in instances where the specific provision comes into conflict with these rules. The Authority and Scope of the proposed rules are amended as follows:

2.4 [The evidentiary and procedural Rules promulgated herein apply in the absence of a specific provision in any ordinance governing the conduct of proceedings before the IHO and/or applicability of the NM Rules of Civil Procedure and NM Rules of Evidence in proceedings initiated before the IHO.] If a more specific law applies to the hearing type at issue, that more specific regulation shall control. In the event that any of the IHO Rules conflict with any specific provision of law establishing a hearing and appeals process, such specific provision shall control.

The first comment received from Mr. Kerley requests the City amend the Definitions Section of the proposed rules clarifying that Definitions apply to enforcement actions filed with the IHO. In response to Mr. Kerley’s first comment the IHO recommends adopting the spirit of Mr. Kerley’s comment to clarify the Definitions. The Definitions section of the proposed rules is amended as follows:

3.1 “Appellant” or “Petitioner” means the person or entity filing an appeal [or initiating an action] with the IHO.

3.2 “Appellee” or “Respondent” means the person or entity responding to or answering to the appeal [or action].

The ASE Program requested an amendment to **Section 4.1** to clarify that electronic filing of ASE appeals, submitted through electronic software vendors, is permitted. The IHO recommends accepting the spirit of the request from the ASE Program. Because some appeals will be filed electronically, the IHO amended **Section 4.3** regarding the date and time appeals will be considered filed. In response to the ASE Program comments about endorsing filings the IHO verified that the current vendor for ASE appeals, NovoaGlobal, endorses the electronic ASE appeals documentation with the time, date, and year of filing. The Filing an Appeal and Requesting Hearing Before The IHO section is amended as follows:

4.1 An Appellant shall file a written request for hearing and notice of appeal with the IHO, using the IHO form labeled “Request for Hearing and Notice of Appeal” or a substantially similar form in accordance with §2-7-8-7 ROA 1994. [Appeals filed through an electronic citation platform shall be accepted by the IHO.]

4.2 Upon the filing of the appeal, the IHO personnel shall endorse the document and include the time, day, month and year that it is filed. The IHO staff may only reject an appeal filed with the incorrect office, such as an appeal that should be filed in District Court.

4.3 The appeal shall be marked as filed on the business day that the IHO receives the pleading. Any appeal submitted electronically to the IHO after 5:00 pm on a business day [~~will not be marked as~~] shall be considered filed ~~until~~ the next business day.

The Code Enforcement Division requested an amendment to **Section 4.1** of the proposed rules to allow for filings of enforcement actions. Although enforcement actions are filed with the IHO, many of those actions have different laws or rules governing filing. As stated in **Section 2.4** of the proposed rules, portions of the rules do not apply when a more specific provision of law is applicable to the hearing type, such as in the ASE Ordinance and in the State statute governing speed cameras. The hearing officer recommends rejecting the request to amend **Section 4.1** to account for enforcement actions.

Mr. Kerley’s second comment requested the inclusion of motions, exhibits and other papers be added to clarify **Section 5** of the proposed rules to ensure that all documents filed with the IHO are given a time stamp and served on other parties. Mr. Kerley also requested an amendment to **section 11** of the proposed rules to clarify that marking and filing of exhibits is required, not marking and filing of evidence. In response to Mr. Kerley’s second and third comments the Hearing Officer recommends adopting the spirit of Mr. Kerley’s comments to clarify how all documents must be filed with the IHO, that documents must be served on opposing parties, and clarifying language to ensure due process. The Filing of Pleadings section of the proposed rules is amended as follows:

- 5.1** All pleadings[, motions and other papers] shall be filed with the IHO:
 - 5.1.1** By mail at: The Office of the City Clerk, P.O. Box 1293, Albuquerque, NM 87103; or
 - 5.1.2** In person at: The Office of the City Clerk, 600 2nd St. NW, Albuquerque, NM 87102; or
 - 5.1.3** By email at: summonsandappeals@cabq.gov; or
 - 5.1.4** Online at: <https://www.cabq.gov/clerk/administrative-hearings>.
- 5.2** All pleadings[, motions and other papers] shall be in writing and shall state with particularity the grounds and the relief sought, except the hearing officer may allow for an oral motion made on the record.
- 5.3** The moving party shall provide a copy of all filed pleadings[, motions and other papers] to all opposing parties.
- 5.4** Before submission of any motion or request for continuance, the requesting party shall make reasonable efforts to consult with the opposing party about that party’s position on the motion. The party shall state the position of the opposing party in the pleading motion.
- 5.5** Unless a different deadline applies, or is ordered by the hearing officer, the opposing party has 15 days to file a written response to a pleading. If any deadline falls on a Saturday, Sunday, or City holiday, the deadline falls on the next business day. The assigned hearing officer or controlling law may require a shorter response deadline.
- 5.6** Pleadings[, motions and other papers] shall be marked as filed on the business day that the IHO receives the pleading document. Any pleading document submitted electronically to the IHO after 5:00 pm on a business day will not be marked as filed until the next business day.

In addition to the comments above by Mr. Kerley regarding the use of the word “evidence” instead of “exhibits”, the City’s ASE Program and the City’s Code Enforcement Division requested an amendment to the proposed rules to reduce the number of days a party is required to submit exhibits in advance of a hearing from 5 days to 1 day. Based on the comments from the City

Departments the hearing officer felt it was appropriate to amend the number of days to 3 in order to reduce the burden on City Departments for collection of evidence outside of their control, such as obtaining evidence from the State’s Motor Vehicle Division (MVD). Although the Code Enforcement Division’s current practices may be impacted by the proposed rules, the proposed rules are intended to cover a wide range of proceedings before the IHO.

The IHO initially proposed submission of exhibits occur 5 days in advance of a hearing so the IHO could ensure that opposing parties received copies of filed exhibits, a burden the IHO was willing to take on. The IHO often interacts with individual parties who do not have an email address, which requires exhibits to be mailed. In reducing the days required for filing the exhibits, the IHO felt it appropriate to amend the proposed rules to clarify that parties who file exhibits must also send a copy of the exhibits to the opposing parties. Finally, the IHO wants to point out that the proposed rules do not necessarily require the hearing officer to reject untimely filed exhibits, instead the hearing officer may admit exhibits filed after the now 3 day deadline at the Hearing Officer’s discretion. In order to ensure fair and impartial hearings, to uphold the due process rights of all parties, and for the efficiency of the IHO, the IHO feels the 3 day requirement is appropriate in balancing the interests of the involved parties.

The Evidence Section of the proposed rules is amended as follows:

- 11.2** All ~~[evidence]~~[exhibits] shall be submitted to the Independent Hearing Office at least ~~[3]~~[5] days prior to any hearing~~[and the producing party shall provide copies to all opposing parties].~~
- 11.2.1** By email at: summonsandappeals@cabq.gov; ~~[or]~~
- 11.2.2** By mail to: Office of the City Clerk, P.O. Box 1293, Albuquerque, NM 87103; or
- 11.2.3** In person at: Office of the City Clerk, 600 2nd St. NW, Albuquerque, NM 87102.
- 11.3** ~~[Evidence]~~[Exhibits] shall be properly labeled prior to submission. The appellee ~~[or respondent]~~ shall label ~~[evidence]~~ [exhibits] using numbers (such as Exhibit 1, Exhibit 2, Exhibit 3). The appellant ~~[or petitioner]~~ shall label evidence using letters (such as, Exhibit A, Exhibit B, Exhibit C). ~~[Evidence]~~[Exhibits] submitted less than ~~[3]~~[5] days before a hearing may be admitted at the discretion of the hearing officer.

The ASE Program, the Code Enforcement Division, and the Adapt Program requested an amendment to **Section 12** of the proposed rules that would require a party opposing the presentation of expert testimony affirmatively request disclosure of expert witnesses 6 days in advance of a hearing to reduce the burden on City Departments to disclose expert standby witnesses. The IHO rejected this request and instead amended this section to allow the Departments who regularly call the same expert witness on the same types of cases to disclose the witness in advance of a hearing but allow the Department to maintain a publicly available website, linked in their witnesses list, where the other required information can be posted. **Section 12** is amended as follows:

- 12.3** If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party shall file a witness list designat~~[ing]~~[ed on] the witness as an expert witness at least 5 days before the scheduled hearing and provide the witness list to the opposing party and the IHO. The party intending to call the expert witness shall specifically identify the expert witness, the scope of that expert’s purported testimony relative to the proceeding, the expert’s credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion. The opposing party may file a response in opposition ~~[before]~~

~~the hearing~~] or challenge the designation of the witness as an expert [before or]during the course of the hearing.

[12.3.1 A City Department that routinely calls the same expert witness in specific types of cases shall file a witness list disclosing the name of the expert witness and reference a publicly available website where the expert witness' information can be found. The City Department shall provide the witness list to the opposing party and the IHO at least 3 days before the scheduled hearing. Such website shall identify the expert witness by name, the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion.]

Conclusion

The City Clerk's Office, having conducted the proposed rulemaking in accordance with ROA 1994 §2-15-1, and received and considered public comment, recommends adoption of the attached proposed rules as amended.

Attachments: Rules Governing the City of Albuquerque Independent Hearing Office (IHO)
Comments from Gillam Kerley
Comments from ASE
Comments from ADAPT
Comments from CED

Approved:

Signed by:

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Ethan Watson
City Clerk

3/18/2025 | 12:41 PM MDT

Date

DocuSigned by:

BC2424C09B8741A...
Dr. Samantha Sengel
Chief Administrative Officer

3/20/2025 | 11:21 AM MDT

Date

**RULES GOVERNING THE CITY OF ALBUQUERQUE
INDEPENDENT HEARING OFFICE (IHO)**

1. TITLE:

1.1 These Rules may be referred to as the Independent Hearing Office Rules, IHO Rules, Office of Administrative Hearing Rules, or OAH Rules.

2. AUTHORITY AND SCOPE:

2.1 The IHO Rules are promulgated pursuant to ROA 1994, §2-7-8-3 hereinafter the “IHO Ordinance”.

2.2 The IHO Rules provide general practice rules for all proceedings before the IHO.

2.3 In the event the IHO Rules are in conflict with any provision of the IHO Ordinance, the provision of the IHO Ordinance shall control.

2.4 The evidentiary and procedural Rules promulgated herein apply in the absence of a specific provision in any ordinance governing the conduct of proceedings before the IHO and/or applicability of the NM Rules of Civil Procedure and NM Rules of Evidence in proceedings initiated before the IHO. If a more specific law applies to the hearing type at issue, that more specific regulation shall control. In the event that any of the IHO Rules conflict with any specific provision of law establishing a hearing and appeals process, such specific provision shall control.

3. DEFINITIONS:

3.1 “Appellant” or “Petitioner” means the person or entity filing an appeal or initiating an action with the IHO.

3.2 “Appellee” or “Respondent” means the person or entity responding to or answering to the appeal or action.

3.3 “Independent Hearing Office” or “IHO” means the Independent Hearing Office created as a division of the Office of the City Clerk.

3.4 “Office of Administrative Hearings” or “OAH” means the “Independent Hearing Office” or “IHO.”

4. FILING AN APPEAL AND REQUESTING HEARING BEFORE THE IHO:

4.1 An Appellant shall file a written request for hearing and notice of appeal with the IHO, using the IHO form labeled “Request for Hearing and Notice of Appeal” or a substantially similar form in accordance with §2-7-8-7 ROA 1994. Appeals filed through an electronic citation platform shall be accepted by the IHO.

4.2 Upon the filing of the appeal, the IHO personnel shall endorse the document and include the time, day, month and year that it is filed. The IHO staff may only reject an appeal filed with the incorrect office, such as an appeal that should be filed in District Court.

4.3 The appeal shall be marked as filed on the business day that the IHO receives the pleading. Any appeal submitted electronically to the IHO after 5:00 pm on a business day shall be considered filed the next business day.

4.4 The hearing officer may provide written notice to the appellant when the appellant files an incomplete or deficient or incomplete appeal. If a party fails to cure the deficiency

within 15 days, the IHO may enter an order which provides for dismissal of the party's claim without prejudice.

5. FILING OF PLEADINGS:

5.1 All pleadings, motions and other papers shall be filed with the IHO:

5.1.1 By mail at: The Office of the City Clerk, P.O. Box 1293, Albuquerque, NM 87103; or

5.1.2 In person at: The Office of the City Clerk, 600 2nd St. NW, Albuquerque, NM 87102; or

5.1.3 By email at: summonsandappeals@cabq.gov; or

5.1.4 Online at: <https://www.cabq.gov/clerk/administrative-hearings>.

5.2 All pleadings, motions and other papers shall be in writing and shall state with particularity the grounds and the relief sought, except the hearing officer may allow for an oral motion made on the record.

5.3 The moving party shall provide a copy of all filed pleadings, motions and other papers to all opposing parties.

5.4 Before submission of any motion or request for continuance, the requesting party shall make reasonable efforts to consult with the opposing party about that party's position on the motion. The party shall state the position of the opposing party in the motion.

5.5 Unless a different deadline applies, or is ordered by the hearing officer, the opposing party has 15 days to file a written response to a pleading. If any deadline falls on a Saturday, Sunday, or City holiday, the deadline falls on the next business day. The assigned hearing officer or controlling law may require a shorter response deadline.

5.6 Pleadings, motions and other papers shall be marked as filed on the business day that the IHO receives the document. Any document submitted electronically to the IHO after 5:00 pm on a business day will not be marked as filed until the next business day.

6. FAILURE TO RESPOND/ANSWER:

6.1 Failure to file a response or answer in opposition to any request for relief or motion may be presumed to be consent to the relief sought, although the hearing officer is not required to make such a default ruling on the motion if the relief would be contrary to the hearing officer's view of the facts or law on the issues.

7. REPRESENTATION AT HEARING:

7.1 Only the following shall be authorized to represent a party at a hearing before the IHO, unless otherwise expressly authorized by ordinance, or another provision of law:

7.1.1 A party to the action;

7.1.2 An authorized agent, if the party is an entity or business;

7.1.3 An attorney authorized to practice law in New Mexico;

7.1.3.1 Any attorney wishing to represent a party shall file a formal written entry of appearance directly with the IHO, listing their mailing address, phone number, and a valid email address; or

7.1.4 A union representative appearing on behalf of its member(s).

8. PREHEARING CONFERENCES:

8.1 The hearing officer may conduct a prehearing conference upon the request of either party or at the hearing officer's discretion, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.

8.2 Prehearing conferences conducted by the hearing officer shall be recorded.

8.3 The hearing officer may enter in the record a written order that recites the results of a prehearing conference conducted by the hearing officer. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified.

9. HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:

9.1 All hearings before the IHO may occur by telephone, videoconference, or other equivalent electronic method. A party may request an in-person hearing. The hearing officer may schedule an in-person hearing at their discretion. In person hearings shall occur at the IHO office located at: Office of the City Clerk, 600 2nd St. NW, Albuquerque, NM 87102, or another location selected by the hearing officer or administrative staff.

9.1.1 The hearing officer may recess a hearing occurring by telephone, videoconference, or other equivalent electronic method and reconvene the proceeding as an in-person hearing when it is necessary to ensure a full or fair hearing process or upon the request of either party.

9.2 The IHO shall notify the parties to the hearing by mail of the date, time and, place scheduled for the hearing at least 7 days before the scheduled hearing, unless the applicable law requires a shorter period of time. This notice will be directed to the address contained on the notice of appeal and request for a hearing.

10. BURDEN OF PROOF, PRESENTATION OF CASE:

10.1 Unless otherwise specified by law, the burden of proof in an administrative proceeding before the IHO is the preponderance of evidence.

10.2 The party with the burden of proof in the case will ordinarily present their case first, followed by the opposing party, unless the hearing officer makes reasonable exceptions related to the availability of the witnesses and representatives or other scheduling concerns.

10.3 The hearing officer may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be

adopted as evidence by sworn oath of the party-witness who made the opening statement.

- 10.4** All testimony must be given under oath and will be subject to questioning of the opposing party. The hearing officer may also ask questions of the witness as appropriate. At the hearing officer's discretion, redirect and recross may be allowed.
- 10.5** The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the hearing officer in writing after conclusion of the hearing.
- 10.6** The hearing officer may also require the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing.

11. EVIDENCE:

- 11.1** The New Mexico rules of evidence and civil procedure shall not apply in any matter before the IHO unless otherwise expressly and specifically required by law, regulation, or order of the hearing officer in accordance with ROA 1994, § 2-7-8-9(A). Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.
- 11.2** All exhibits shall be submitted to the Independent Hearing Office at least 3 days prior to any hearing and the producing party shall provide copies to all opposing parties.
 - 11.2.1** By email at: summonsandappeals@cabq.gov; or
 - 11.2.2** By mail to: Office of the City Clerk, P.O. Box 1293, Albuquerque, NM 87103; or
 - 11.2.3** In person at: Office of the City Clerk, 600 2nd St. NW, Albuquerque, NM 87102.
- 11.3** Exhibits shall be properly labeled prior to submission. The appellee or respondent shall label exhibits using numbers (such as Exhibit 1, Exhibit 2, Exhibit 3). The appellant or petitioner shall label exhibits using letters (such as, Exhibit A, Exhibit B, Exhibit C). Exhibits submitted less than 3 days before a hearing may be admitted at the discretion of the hearing officer.
- 11.4** Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained by the IHO as part of the administrative record.
- 11.5** In lieu of the introduction of tangible objects as exhibits, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object for the record
- 11.6** The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute. Administrative notice may be taken at any stage in the proceeding whether or not requested by the parties. A party is entitled to respond

as to the propriety of taking administrative notice which shall include the opportunity to refute a noticed fact.

- 11.7** Parties objecting to evidence shall timely and briefly state the grounds for the objection. Rulings on evidentiary objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

12. WITNESSES, EXPERT WITNESSES, AND INVOCATION OF THE RULE:

- 12.1** Any person having relevant, material knowledge related to one of the issues in a hearing may testify as a witness under oath in the matter. Upon affirming the oath, the witness may be questioned by both parties and by the hearing officer.

- 12.2** Unless a more specific provision applies, witnesses are ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the assigned hearing officer allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone or videoconference.

- 12.3** If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party shall file a witness list designating the witness as an expert witness at least 5 days before the scheduled hearing, and provide the witness list to the opposing party and the IHO. The party intending to call the expert witness shall specifically identify the expert witness, the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion. The opposing party may file a response in opposition or challenge the designation of the witness as an expert before or during the course of the hearing.

- 12.3.1** A City Department that routinely calls the same expert witness in specific types of cases shall file a witness list that references a publicly available website where the expert witness's information can be found. Such website shall identify the expert witnesses by name, the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion.

- 12.4** At the hearing, either party can invoke the exclusionary rule, excluding all witnesses other than the real party in interest, their representative, and any designated expert witness from the proceeding until the time of their testimony. If the exclusionary rule has been invoked, the witnesses shall not discuss their testimony with each other until the conclusion of the proceeding. When the exclusionary rule has been invoked, any witness who remains in the hearing after conclusion of their testimony may not be recalled as a witness in the proceeding, except that any witness may observe the

testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

13. HEARING OFFICER POWERS AND RESPONSIBILITIES:

13.1 Hearings shall be presided over by a hearing officer appointed or hired in accordance with the IHO Ordinance.

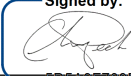
13.2 In the performance of the hearing officer's adjudicative functions, the hearing officer is prohibited from engaging in any ex parte communications about the substantive issues with any party on any matter. An ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

14. EFFECTIVE DATE AND FILING:

14.1 These rules shall become effective as of the date of the last signature below and shall be filed in the Office of the City Clerk.

*****END OF DOCUMENT*****

RECOMMENDED:

Signed by:

SD5A9F709F674F8...
Ethan Watson
City Clerk

3/18/2025 | 12:41 PM MDT
Date

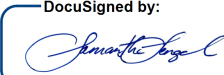
APPROVED AS TO FORM:

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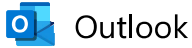
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Lauren Keefe
City Attorney

3/18/2025 | 5:29 PM MDT
Date

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Dr. Samantha Sengel
Chief Administrative Officer

3/20/2025 | 11:21 AM MDT
Date



Outlook

Clerk Rulemaking Available Rules Comment Form

From webmaster@cabq.gov <webmaster@cabq.gov>

Date Wed 2/19/2025 9:39 PM

To Santistevan, Ashley A. <ashley@cabq.gov>

Cc Peck, Christopher <cpeck@cabq.gov>; Rocha, Cristobal <crisobalrocha@cabq.gov>

[EXTERNAL] Forward to phishing@cabq.gov and delete if an email causes any concern.

Individual Type

Individual

First Name

Gillam

Last Name

Kerley

Contact Email

gil@505mail.com

Contact Phone Number

5053076773

City

Albuquerque

State

NM

Zip

87119

Organization Type

Organization Name

Available Rules

Rules Governing the City of Albuquerque Independent Hearing Office

Comments

In some categories of cases, such as hearings under the Integrated Development Ordinance, the IHO/OAH has original, rather than appellate, jurisdiction. The definitions in proposed subsections 3.1 and 3.2, however, assume that the IHO/OAH only acts in an appellate role.

I would suggest the following changes:

Subsection 3.1 should read "filing an appeal with or requesting a hearing before" rather than "filing an appeal with".

Subsection 3.2 should read "to the appeal or request for hearing. Rather than "to the appeal."

It is unclear what filings proposed section 5 is intended to cover. My understanding is that the term "pleadings" typically does not include motions or other papers, but only the complaint and answer (or equivalents in the IHO/OAH context). The failure to address motions and other papers would leave a gap in the proposed rules. In addition, the proposed rules do not require service of exhibits on opposing parties.

To remedy these issues, I would suggest the following changes, influenced by similar language in the New Mexico Rules of Civil Procedure:

Section 5 should be re-titled "FILING OF PLEADINGS, MOTIONS, EXHIBITS, AND OTHER PAPERS".

Subsection 5.2 should begin "All pleadings and motions ..." rather than "all pleadings ..."

Subsection 5.3 should read "... all filed pleadings, motions, exhibits, and other papers ..." rather than "... all filed pleadings ..."

Subsection 5.5 should read "a pleading or motion." rather than "a pleading."

Subsection 5.6 should read "Pleadings, motions, exhibits, and other papers ..." rather than "Pleadings ..."

The term "evidence" includes not only physical exhibits but also witness testimony given at the hearing. From context, I believe that subsections 11.2 and 11.3 are intended to refer only to "exhibits" rather than "evidence" generally. In addition, the language in proposed subsection 11.3 only addresses cases in which the IHO/OAH is exercising appellate jurisdiction

I would suggest the following changes:

Subsections 11.2 and 11.3 should read "exhibits" rather than "evidence".

If the language in section 5.3 is not modified to require service of exhibits on opposing parties, that requirement should be inserted in subsection 11.2.

Subsection 11.3 should read "appellee or respondent" rather than "appellee" and "appellant or petitioner" rather than "appellant", to match the language in subsections 3.1 and 3.2.

Respectfully submitted,
Gillam Kerley

Captcha

x



City of Albuquerque

Department of Municipal Development

Timothy M. Keller, Mayor

Interoffice Memorandum

March 13, 2025

To: Ethan Watson, City Clerk

From: Valerie Hermanson, Public Works Strategic Program Manager

Subject: Feedback Proposed Rules Governing the City of Albuquerque Independent Hearing Office

Mr. Watson,

I am writing to provide the Department of Municipal Development's ("DMD") feedback on the proposed Rules Governing the City of Albuquerque's Independent Hearing Office ("Proposed Rules"). As you are aware, the Automated Speed Enforcement ("ASE") Program is housed within DMD, and appeals of civil fines issued by the ASE Program go before the Independent Hearing Office.

Although those proceedings are bound by the Rules of Evidence and the Rules of Civil Procedure, it is my understanding that the Proposed Rules will still apply to ASE appeals where they do not conflict. Consequently, DMD has reviewed the Proposed Rules and makes the following suggestions to revise them:

- **Section 4.1** – An Appellant shall file a written request for hearing and notice of appeal with the IHO, using the IHO form labeled "Request for Hearing and Notice of Appeal[1]" [~~or~~] a substantially similar form in accordance with § 2-7-8-7 ROA 1994[, or a form otherwise approved by the City Clerk].
 - Reason for suggested change: ASE appeals are submitted electronically using software generated by a vendor, and they do not use the standard request for hearing form. DMD would prefer to maintain that practice, and this change would allow the City Clerk to authorize that type of form.
- **Section 4.2** – Upon the filing of the appeal, the IHO personnel shall endorse the document and include the time, day, month and year that it is filed. The IHO staff may only reject an

appeal filed with the incorrect office, such as an appeal that should be filed in District Court.

- Concern as written: DMD does not have a recommended change for this provision, but it did want to flag a concern. Specifically, ASE appeal requests are submitted electronically. To DMD’s knowledge, ASE appeal requests are not endorsed with the time, day, month and year in which they are received. If the Independent Hearing Office intends to endorse ASE appeal requests going forward, DMD supports that practice. However, if that is not practical given the nature in which those appeals are submitted, DMD suggest adding language to this rule to allow for a limited exception where needed.
- **Section 11.2** – All evidence shall be submitted to the Independent Hearing Office at least ~~[5]~~**[1]** day~~s~~ prior to any hearing.
 - Reason for suggested change: ASE appeals rely in part on evidence obtained from the New Mexico Motor Vehicle Division concerning the registration of vehicles. The City cannot control how quickly the MVD sends that evidence to the City, and it can only make such requests after a day’s docket has been finalized. Additionally, there have been occasions when the City has requested a continuance due to those records not arriving on time. Changing this rule to allow evidence submitted at least one day in advance of any hearing will lessen the chance that DMD has to request continuances due to the delays beyond its control.
- **Section 11.3** – Evidence shall be properly labeled prior to submission. The appellee shall label evidence using numbers (such as Exhibit 1, Exhibit 2, and Exhibit 3). The appellant shall label evidence using letters (such as Exhibit A, Exhibit B, Exhibit C). Evidence submitted less than ~~[5]~~**[1]** days before a hearing may be admitted at the discretion of the hearing officer.
 - Reason for suggested change: As detailed above, changing this from five days to one day will lessen the chance that DMD has to request continuances due to the delays beyond its control.
- **Section 12.3** – ~~[If either party intends to call and treat a particular witness as an expert witness in the proceeding]~~**Upon the written request of a party to disclose expert witnesses that is submitted to the IHO no less than 6 days in advance of the hearing**, ~~[all parties]~~**[the party]** shall file a witness list designat~~ion~~**[ing]** ~~[the]~~**[any intended expert]** witness as an expert witness ~~[at least 5 days before the scheduled hearing]~~**[within 5 days of the request being filed]**, and provide the witness list opposing party and the IHO. The party intending to call the expert witness shall specifically identify the expert witness, the scope of that expert’s purported testimony relative to the proceeding, the expert’s credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion. The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.

- Reason for suggested change: ASE appeals occasionally involve expert witnesses who provide information on the technical aspects of automated speed cameras. Those expert witnesses generally only testify if an appellant has questions on those technical aspects, so DMD does not know in advance of a hearing if they will actually be called to testify. DMD does not oppose disclosing the presence of an expert in advance of a hearing, but it would be unduly burdensome to file such a disclosure before every hearing to cover the mere chance that the expert could testify. Changing this rule to trigger only on request of a party will preserve the intent of the rule without unduly burdening DMD.

I am hopeful that you will take these proposed changes and the explanations for them into consideration as you prepare a final draft of the Proposed Rules. If you have any questions concerning these changes, a representative of DMD will be present at the public hearing on March 13, 2025, to answer them.

Respectfully submitted,

CITY OF ALBUQUERQUE
Department of Municipal Development

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City of Albuquerque

ADAPT Program

Timothy M. Keller, Mayor

Interoffice Memorandum

March 13, 2025

To: Ethan Watson, City Clerk
From: Captain David Baca, ADAPT Program
Subject: Feedback Proposed Rules Governing the City of Albuquerque Independent Hearing Office

Mr. Watson,

I am writing to provide the Abandoned and Dilapidated Abatement Property Team (“ADAPT”) Program’s feedback on the proposed Rules Governing the City of Albuquerque’s Independent Hearing Office (“Proposed Rules”). As you may be aware, appeals of civil fines issued by ADAPT pursuant to the Nuisance Abatement Ordinance go before Independent Hearing Office (“IHO”). Consequently, ADAPT has reviewed the Proposed Rules and makes the following suggestion to revise them:

- **Section 12.3 – ~~[If either party intends to call and treat a particular witness as an expert witness in the proceeding]~~[Upon the written request of a party to disclose expert witnesses that is submitted to the IHO no less than 6 days in advance of the hearing], [all parties][the party] shall file a witness list designat~~ion~~ing ~~[the]~~[any intended expert] witness as an expert witness ~~[at least 5 days before the scheduled hearing]~~[within 5 days of the request being filed], and provide the witness list opposing party and the IHO. The party intending to call the expert witness shall specifically identify the expert witness, the scope of that expert’s purported testimony relative to the proceeding, the expert’s credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion. The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.
 - Reason for suggested change: The basis for ADAPT’s nuisance abatement actions is typically a high amount of criminal activity occurring on a property. Consequently, testimony about that activity will be an element of any appeal**

concerning ADAPT's civil fines. Additionally, ADAPT enforces the City's Crime Prevention Standards, which nuisance properties are required to implement when deemed necessary by one of ADAPT's Crime Prevention Specialists. In appeals of ADAPT's civil fines, a Crime Prevention Specialist will be providing their opinion on the cause of criminal activity on the property in question and explaining why the Crime Prevention Standards would lessen the likelihood of that crime occurring. That testimony may fall into expert witness testimony. Consequently, the rule as written would require ADAPT to provide an expert witness list before each hearing, which would be unduly burdensome on ADAPT. Changing this rule to trigger only on request of a party will preserve the intent of this rule without unduly burdening ADAPT.

I am hopeful that you will take this proposed change and its explanation into consideration as you prepare a final draft of the Proposed Rules. If you have any questions concerning this change, a representative of ADAPT will be present at the public hearing on March 13, 2025, to answer them.

Respectfully submitted,

CITY OF ALBUQUERQUE

ADAPT Program

David Baca

David Baca

ADAPT Captain

(505) 924-3637

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City of Albuquerque

Code Enforcement Division

Timothy M. Keller, Mayor

Interoffice Memorandum

March 13, 2025

To: Ethan Watson, City Clerk

From: Angelo Metzgar, Code Compliance Manager

Subject: Feedback Proposed Rules Governing the City of Albuquerque Independent Hearing Office

Mr. Watson,

I am writing to provide the Code Enforcement Division's ("CED") feedback on the proposed Rules Governing the City of Albuquerque's Independent Hearing Office ("Proposed Rules"). As you are aware, the appeals of many of CED's enforcement actions go before Independent Hearing Office ("IHO"). Additionally, CED makes its own requests for hearings when it issues Notices of Civil Enforcement pursuant to the City's Integrated Development Ordinance. Consequently, CED has reviewed the Proposed Rules and makes the following suggestions to revise them:

- **Section 4.1** – An Appellant shall file a written request for hearing and notice of appeal with the IHO, using the IHO form labeled "Request for Hearing and Notice of Appeal[.]" [~~or~~] a substantially similar form in accordance with § 2-7-8-7 ROA 1994[, or a form otherwise approved by the City Clerk].
 - Reason for suggested change: Pursuant to the Integrated Development Ordinance, CED requests hearing when it issues a Notice of Administrative Civil Enforcement. This change will allow CED personnel to continue to submit hearing requests in a manner approved by the City Clerk without burdening them by requiring them to submit a formal request for hearing form.
- **Section 11.2** – All evidence shall be submitted to the Independent Hearing Office at least [~~5~~][1] day[~~s~~] prior to any hearing.
 - Reason for suggested change: CED often visits properties within two days of the hearing to determine whether the violations at issue in the appeal or hearing are still present. In the event that they are, CED gathers evidence of those violations and

submits them to the IHO to provide the hearing officer with the most complete picture of the circumstances on the property at possible. The reason evidence is gathered so close to the hearing in these cases is, in many instances, a property owner can quickly remedy the violations on their property, and many do so shortly before a scheduled hearing. Inspecting properties so close to the hearing date often allows CED to request the dismissal of cases where owners have come into compliance before a hearing is held. Changing this rule to require such evidence to be submitted no less than one day in advance of the hearing will allow CED to continue that practice.

- **Section 11.3** – Evidence shall be properly labeled prior to submission. The appellee shall label evidence using numbers (such as Exhibit 1, Exhibit 2, and Exhibit 3). The appellant shall label evidence using letters (such as Exhibit A, Exhibit B, Exhibit C). Evidence submitted less than ~~5~~1 days before a hearing may be admitted at the discretion of the hearing officer.
 - Reason for suggested change: As detailed above, changing this from five days to one day will allow CED to provide the hearing officer with the most complete picture of the conditions on a property as possible, and it will result in the dismissal of a greater number of cases prior to a hearing.
- **Section 12.3** – ~~[If either party intends to call and treat a particular witness as an expert witness in the proceeding]~~[Upon the written request of a party to disclose expert witnesses that is submitted to the IHO no less than 6 days in advance of the hearing], ~~[all parties]~~[the party] shall file a witness list designat~~ion~~ing ~~[the]~~[any intended expert] witness as an expert witness ~~[at least 5 days before the scheduled hearing]~~[within 5 days of the request being filed], and provide the witness list opposing party and the IHO. The party intending to call the expert witness shall specifically identify the expert witness, the scope of that expert’s purported testimony relative to the proceeding, the expert’s credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion. The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.
 - Reason for suggested change: Although CED personnel mostly serve as factual witnesses in hearings concerning CED’s enforcement, CED personnel are experts in their fields. They are trained to recognize not only violations of the City’s ordinances but to understand the impact such violations have on public safety and to generate informed opinions on technical matters such as structural assessments. Providing those opinions and explaining the basis for them provides important information for the hearing officer in CED’s hearings, and it can stray into expert witness territory. CED does not oppose disclosing the presence of an expert witness in advance of a hearing if the appellant/respondent requests such information, but it would be unduly burdensome to file such a disclosure for all cases. Changing this

rule to trigger only on request of a party will preserve the intent of the rule without unduly burdening CED.

I am hopeful that you will take these proposed changes and the explanations for them into consideration as you prepare a final draft of the Proposed Rules. If you have any questions concerning these changes, a representative of CED will be present at the public hearing on March 13, 2025, to answer them.

Respectfully submitted,

CITY OF ALBUQUERQUE
Code Enforcement Division

Angelo Metzgar
Code Compliance Manager
(505) 924-3301
ametzgar@cabq.gov