

CHAPTER 2: GOVERNMENT

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ARTICLE 1: CITY COUNCIL

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§ 2-1-1 MEETINGS.

The regular meetings of the Council shall be held on the first and third Monday of each month beginning at 5:00 p.m. and ending no later than 10:30 p.m. (unless the Council suspends its rules to continue beyond that time) in the Vincent E. Griego Chambers, lower level of the Albuquerque/Bernalillo County Government Center, or as otherwise designated by a majority of the City Council. As early as possible each calendar year, the President of the Council shall introduce a resolution specifying an official list of regular City Council meetings for the year; the adopted list should omit dates which are holidays or on which it appears unlikely that a quorum will be available; the adopted list may schedule dates for regular meetings other than first and third Mondays, whether to replace regular meeting dates which will not be used or as otherwise seems appropriate to meet the needs of the Council. At other times when it becomes evident that the adopted list of regular meetings should be amended, this may be done by resolution; such action should be taken as soon as it becomes clear that a change is appropriate.

('74 Code, § 1-7-1) (Ord. 40-1974; Am. Ord. 6-1990; Am. Ord. 47-2002; Am. Ord. 62-2004; Am. Ord. 14-2005; Am. Ord. 10-2006)

§ 2-1-2 SPECIAL MEETINGS.

Special meetings of the Council may be called by the President or by three Councillors; provided that a written notice of such meeting shall be given to each member of the Council at least 48 hours before the time set for the meetings, except as otherwise provided by this ordinance.

('74 Code, § 1-7-2) (Ord. 40-1974)

§ 2-1-3 EMERGENCY MEETINGS.

(A) Notwithstanding any provision contained herein, the president of the City Council may, in the event of an emergency, call with whatever notice is possible under the circumstances, a meeting of the City Council to consider any matter.

(B) For the purposes of this section, *EMERGENCY* is defined to include an unexpected occurrence or condition, or the state resulting therefrom, which may require immediate consideration or action by the City Council.

('74 Code, § 1-7-3) (Ord. 40-1974)

§ 2-1-4 NOTICE OF PUBLIC MEETINGS.

(A) (1) The Council shall adopt in its Rules of Procedure provisions to give notice of public meetings of the Council and its committees, which rules shall be in compliance with Section 10-15-1 NMSA 1978, a portion of the Open Meetings Act.

(2) Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such agenda. Except in the case of emergency, the agenda shall be available to the public at least 24 hours prior to the meeting. Except for emergency matters, the Council shall take action only on items appearing on the agenda. For purposes of this division (2), an *EMERGENCY* refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body. (Section 10-15-1(F) NMSA 1978)

(B) The Council may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the Council specifies the date, time and place for continuation of the meeting, and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting. (Section 10-15-1(E) NMSA 1978)

('74 Code, § 1-7-4) (Ord. 40-1974; Am. Ord. 6-1990)

§ 2-1-5 QUORUM.

A majority of the members of the Council shall constitute a quorum thereof.

('74 Code, § 1-7-5) (Ord. 40-1974; Am. Ord. 6-1990)

§ 2-1-6 RESCINDED ACTION.

No vote or action of the Council shall be rescinded at any special meeting unless there be present at such special meeting as many members of the Council as were present at the meeting when such vote or action was taken.

('74 Code, § 1-7-6) (Ord. 40-1974; Am. Ord. 6-1990)

§ 2-1-7 ADDRESSING MEETINGS.

The Council shall adopt rules or procedure which assure adequate access by the public to the deliberations of the Council.

('74 Code, § 1-7-7) (Ord. 40-1974; Am. Ord. 6-1990)

§ 2-1-8 RECORDS.

Unless otherwise provided by the Council the City Clerk shall serve as the Clerk of the Council. The Clerk of the Council shall keep the minutes and records of Council proceedings.

('74 Code, § 1-7-8) (Ord. 40-1974; Am. Ord. 6-1990)

§ 2-1-9 PRESIDING OFFICER.

The Council shall elect one of its number to act as President of the Council. The President shall serve at the pleasure of the Council until December 1 of each odd-numbered year, or until his successor has been selected. The Council shall elect a vice president, who shall serve in the absence of the president.

('74 Code, § 1-7-9) (Ord. 40-1974; Am. Ord. 6-1990)

§ 2-1-10 MAYOR.

The Mayor, or the Mayor's representative, shall be present at the hearings on the Mayor's proposed budget to answer questions about the budget. The City Attorney, or his designated representative, shall be present at all meetings of the City Council.

('74 Code, § 1-7-10) (Ord. 40-1974; Am. Ord. 6-1990)

§ 2-1-11 DISTURBING MEETINGS.

It shall be unlawful to disturb any meeting of the City Council or of any committee thereof, or to behave in a disorderly manner at such meeting.

('74 Code, § 1-7-11 (part)) (Ord. 40-1974; Am. Ord. 6-1990) [Penalty, see § 1-1-99](#)

§ 2-1-12 OATH OF OFFICE.

Before entering on the duties of the respective offices, persons certified as elected to the office of the Mayor and City Councillors shall take the following oath:

I, (name of oath taker) , do solemnly swear to uphold the Constitution and the Laws of the United States of America and the Constitution and the Laws of the State of New Mexico; I furthermore do solemnly swear that I will faithfully, impartially, and sincerely perform my duties as a public servant of the people of the City of Albuquerque, New Mexico, to the best of my ability, so help me God.

('74 Code, § 1-7-12) (Ord. 40-1974; Am. Ord. 6-1990; Am. Ord. 13-1990)

§ 2-1-13 COUNCIL JUDGE OF ELECTION AND MEMBERS.

The Council shall be the judge of the election and qualification of its members.

('74 Code, § 1-7-13) (Ord. 40-1974; Am. Ord. 6-1990; Am. Ord. 13-1990)

ARTICLE 2: INTERGOVERNMENTAL AND LEGISLATIVE RELATIONS

Section

- [2-2-1](#) Creation of the joint committee
- [2-2-2](#) Authority and duties of the committee
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§ 2-2-1 CREATION OF THE JOINT COMMITTEE.

There is hereby created a Joint Committee on Intergovernmental and Legislative Relations. The Committee shall be composed of six voting members. Three voting members of the committee shall be members of the City Council. The remaining three voting members shall be designated by the Mayor. The Chief Administrative Officer shall chair the committee. The staff support to the committee shall be provided jointly by the Chief Administrative Officer and the Director of Council Services.

('74 Code, § 1-13-2) (Ord. 50-1976; Am. Ord. 19-1995)

§ 2-2-2 AUTHORITY AND DUTIES OF THE DIRECTOR.

The Joint Committee on Intergovernmental and Legislative Relations shall have the express authority to do the following:

(A) Promote cooperation and encourage coordination between the city and other governmental entities, particularly the state, the county, Albuquerque Public Schools, Albuquerque Metropolitan Arroyo Flood Control Authority and Middle Rio Grande Council of Governments;

(B) Attend such meetings of other governmental entities as may be necessary to accomplish the purposes of this article;

(C) Prepare a legislative program for submission prior to October 1 of each calendar year to the Mayor and Council for their approval and draft appropriate legislation on behalf of the city prior to each session of the legislature of the state;

(D) Represent the city and coordinate its legislative efforts at any general or special session of the legislature of the state;

(E) Prepare a legislative program for submission prior to December 30 of each calendar year to the Mayor and Council for their approval and draft appropriate legislation on behalf of the city prior to each session of the United States Congress;

(F) Adopt and promulgate rules, regulations and orders necessary to implement any authority delegated to the committee by this article;

(G) Represent the city and coordinate its federal legislative program in Washington, D.C.;

(H) Work with the New Mexico Municipal League to coordinate the activities of the city with the programs and activities of other municipalities throughout the state; and

(I) Engage and manage the services of representatives at the state and federal level to assist the committee in carrying out its responsibilities provided in this article.

('74 Code, § 1-13-3) (Ord. 50-1976; Am. Ord. 19-1995)

§ 2-2-3 LOBBYING BY CITY EMPLOYEES.

(A) For the purposes of this section, **LOBBYING** shall be defined as soliciting or seeking to influence the votes of members of a legislative body, including testifying before a legislative body.

(B) Lobbying members of a legislative body in a government other than the city by an employee of the city shall be allowed only under the following circumstances:

(1) During an employee's designated working hours, a city employee:

(a) May engage in lobbying with the permission and/or at the request of the Intergovernmental and Legislative Relations Committee; or

(b) May appear before a meeting of a legislative body to testify at the request of the Mayor, or the Chief Administrative Officer; or

(2) A city employee may engage in lobbying at times other than the employee's designated working hours or at times when the employee is on annual leave or leave without pay, at which times the employee must inform those being lobbied whether or not the adopted legislative policy of the City is being represented; or

(C) A city employee shall not accept employment as a lobbyist for any public or private entity other than the city except with the approval of the Intergovernmental and Legislative Relations Committee.

(D) A city employee who violates the provisions of this section shall be subject to disciplinary action as provided in [Chapter 3, Article 1](#), Merit System; Personnel Policy.

(E) Elected officials of the city are excluded from the provisions of this section.

('74 Code, § 1-13-4) (Ord. 27-1987; Am. Ord. 19-1995)

§ 2-2-4 DETAILED LOBBYING POLICY.

The Joint Intergovernmental and Legislative Relations Committee shall, in addition to developing the general legislative program of the City, meet both before and during the legislative session to take positions on particular areas of legislative concern. The positions taken shall be determined in accordance with the general legislative program adopted by resolution. No department of the city, or individual speaking on behalf of such a department or the city, shall take any position which has not been adopted by the city pursuant to this article. When time does not permit a formal meeting of the Committee, a person authorized to lobby on behalf of the city shall seek direction by polling informally a majority of the Committee members. This section shall not limit the activities of elected public officials, or the committee staff.

('74 Code, § 1-13-5) (Ord. 27-1987; Am. Ord. 19-1995)

ARTICLE 3: LOBBYIST REGISTRATION

Section

[2-3-1](#) Short title

[2-3-2](#) Intent

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[2-3-4](#) Registration statement to be filed; contents; modification to statement

[2-3-5](#) Enforcement of act; investigations by the city attorney; duties of the city clerk

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[2-3-7](#) Compliance; enforcement; hearing and appeal process

[2-3-8](#) Lobbying campaign disclosure, bank account and expenditure requirements and retention of records

§ 2-3-1 SHORT TITLE.

This Ordinance may be cited as the "Lobbyist and Lobbyist Organization Registration and Disclosure Ordinance."

(Ord. 62-2001; Am. Ord. 5-2003)

§ 2-3-2 INTENT.

To declare and identify all professional lobbyists who represent entities that attempt to influence and/or otherwise contribute to public or private discussion with City of Albuquerque public officials including the Mayor and the City Council as elected officials.

(Ord. 62-2001)

§ 2-3-3 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. Means City of Albuquerque.

CITY OFFICIAL. A person holding the office of Mayor, City Councillor, or any member of any city board, committee or commission.

COMMITTEE. A committee created by the Mayor or City Council, including all standing committees of the City Council, and all City Boards, Committees and Commissions created by City Charter, ordinance, or resolution or governed under the provisions of the Public Boards, Commissions and Committee Ordinance, ROA 1994, §§ [2-6-1-1](#) et seq.

COMPENSATION. Money, per diem, salary, fee or portion thereof or the equivalent in services rendered or in-kind contributions received or to be received directly or indirectly in return for lobbying services performed or to be performed.

CONTRIBUTION. A gift, subscription, loan, advance or deposit of any money or other thing of value, including the fair market value of an in-kind contribution, that is made or received for the purpose of influencing City Officials regarding an official action.

EXPENDITURE. A direct or indirect payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include a lobbyist's own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer.

LOBBYING. Attempting to influence:

- (1) A decision related to any matter to be considered or being considered by the City Council, any Council Committee or any Council matter requiring action by the Mayor or awaiting action by the Mayor; or
- (2) An official action.

LOBBYIST. Any individual who is directly or indirectly compensated for the specific purpose of lobbying; is designated by an individual, interest group, or organization or entity to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis. "Lobbyist" does not include:

- (1) An individual who appears on his own behalf in connection with an official action.
- (2) Any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity.
- (3) An employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before the City Council, Council Committee, or a rulemaking proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation.

(4) Any designated member of the staff of the Mayor of the City of Albuquerque, provided the Mayor keeps for public inspection and files with the City Clerk such designation.

(5) A member of the City Council or the staff of the City Council when addressing legislation.

(6) Any witness called by a Council Committee or administrative department to appear before that committee or department in connection with legislation or an official action.

(7) An individual who provides only oral or written public testimony in connection with a City Council or Committee or in a rulemaking proceeding and whose name and the interest on behalf of which he testifies have been clearly and publicly identified.

(8) A publisher, owner or employee of the print media, radio or television, while gathering or disseminating news or editorial comment to the general public in the ordinary course of business.

(9) A representative or officer of an officially recognized Albuquerque Neighborhood Association or Homeowners Association who speaks on behalf of that Association.

LOBBYIST CAMPAIGN or ***LOBBYIST CAMPAIGNING***. The direct or indirect receipt of contributions and/or expenditure of funds to influence the public and/or City Officials regarding an official action by a lobbyist or a lobbyist organization. Each official action the lobbyist or lobbyist organization supports or opposes shall be a separate lobbyist campaign.

LOBBYIST ORGANIZATION. A person who directly or indirectly receives contributions and/or makes expenditures to influence the public and/or City Officials regarding an official action.

LOBBYIST'S EMPLOYER. The person whose interests are being represented and by whom a lobbyist is directly or indirectly retained, compensated or employed.

OFFICIAL ACTION. The action or non-action of a City Official related to any legislative, policy making or rulemaking proceeding or any proposed ballot measure as defined in the Charter of the City of Albuquerque.

PERSON. An individual, partnership, association, committee, federal, state or local governmental entity or agency, however constituted, public or private corporation or any other organization or group of persons who are voluntarily acting in concert, including both for profit and non-profit entities.

PRESCRIBED FORM. A form prepared and prescribed by the City Clerk.

RULEMAKING PROCEEDING. A formal process conducted by a City agency, board or commission for the purpose of adopting a rule, regulation, standard, policy or other requirement of general applicability and does not include adjudicatory proceedings.

(Ord. 62-2001; Am. Ord. 5-2003)

§ 2-3-4 REGISTRATION STATEMENT TO BE FILED; CONTENTS; MODIFICATION TO STATEMENT.

(A) Before any service or lobbyist campaigning covered by the Lobbyist and Lobbyist Organization Registration and Disclosure Ordinance commences, any individual who is initially employed or retained as a lobbyist or any lobbyist organization shall register with the City Clerk filing a single registration statement under oath on a prescribed form showing:

(1) The lobbyist's or lobbyist organization's full name, permanent business address and business address while lobbying or conducting lobbyist campaigning;

(2) The name and address of each of the lobbyist's employers;

(3) The official action the lobbyist or lobbyist organization supports or opposes;

(4) The name, address and telephone number of the lobbyist organization's chairperson and treasurer and all parties having signature authorization for the lobbyist organization's checking account, the name and address of the bank where the lobbyist organization has its checking account and the bank account number; and

(5) The name and address of the bank where the lobbyist has his/her checking account for the checking account required in this Ordinance when the lobbyist campaigns for or against an official action. The checking account number. The name and address of any person who has signature authorization for such checking account.

(B) The City Clerk may charge a reasonable registration fee for the initial registration by a lobbyist or lobbyist organization. No additional fee may be charged for amendments to the original registration or for the annual statement required in this section. Lobbyist organizations that file a lobbyist campaign registration concerning an official action different from that designated in a previous registration shall pay the registration fee required in this subsection for each such subsequent registration. No registration fee shall be required of lobbyists receiving only reimbursement of personal expenses and no other compensation or salary for lobbying unless they are filing for the purpose of conducting lobbyist campaigning.

(C) For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal 12 months following initial registration and every 12 months thereafter for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal. The annual statement shall be in addition to any lobbyist campaign registration and disclosure statement that the lobbyist may be required to file under the provisions of this Ordinance.

(D) Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the year, the lobbyist shall notify the City Clerk within one month of such occurrence.

(E) Lobbyists and lobbyist organizations shall file a separate registration with the City Clerk for each official action the lobbyist or lobbyist organization supports or opposes. When lobbyists or lobbyist organizations support or oppose an official action other than the official action identified in any previous registration they have filed with the City Clerk, they shall file an additional separate registration for each such official action supported or opposed.

(Ord. 62-2001; Am. Ord. 5-2003)

§ 2-3-5 ENFORCEMENT OF ACT; INVESTIGATIONS BY THE CITY ATTORNEY; DUTIES OF THE CITY CLERK.

(A) The City Attorney shall adopt procedures for processing complaints and notifications of violations.

(B) Upon the sworn complaint of any person who has reason to believe, and presents an affidavit listing the basis for such complaint, that there is, or has been a violation of the Lobbyist and Lobbyist Organization Registration and Disclosure Ordinance, the City Attorney shall investigate the allegation when there is reason to believe such person, lobbyist, lobbyist organization or lobbyist's employer is, or has been, acting in violation of the Lobbyist and Lobbyist Organization Registration and Disclosure Ordinance.

(C) When the City Attorney has reason to believe that any person, lobbyist, lobbyist organization or lobbyist's employer has violated or is violating any provision of the Lobbyist Registration Ordinance, he shall notify the suspected violator of the alleged violation and hold an informal meeting before initiating further action.

(Ord. 62-2001; Am. Ord. 5-2003)

§ 2-3-6 REGISTRATION STATEMENT; PRESERVATION AS PUBLIC RECORD.

Each registration and disclosure statement as required by the Lobbyist and Lobbyist Organization Registration and Disclosure Ordinance shall be preserved by the City Clerk for a period of five years from the date of filing as a public record, open to public inspection at any reasonable time. All such reports filed with the City Clerk shall be listed on the City's website within one week of submission and will be periodically updated. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed five years after the date of filing.

(Ord. 62-2001; Am. Ord. 5-2003)

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

(A) The City Clerk shall advise and seek to educate all persons required to perform duties pursuant to this Ordinance. This includes advising all registered lobbyists and lobbyist organizations at least annually of the Lobbyist and Lobbyist Organization Registration and Disclosure Ordinance's deadlines for submitting registration. All prescribed forms shall be clear and easy to complete.

(B) The City Attorney may conduct thorough examinations of reports and conduct any investigations to determine whether this Ordinance has been violated. Any person who believes that this Ordinance has been violated may file a written complaint with the City Attorney pursuant to the requirements of § [2-3-5](#) of this Ordinance. The City Clerk shall adopt procedures for processing complaints and notifications of violations.

(C) The City Attorney shall seek first to insure voluntary compliance with the provisions of this Ordinance pursuant to § [2-3-5](#). A person who violates this Ordinance shall be given fifteen (15) consecutive calendar days notice to correct the matter or request a hearing before a City Hearing Officer before fines are imposed. The fifteen day notice shall begin to run on the day the notice is mailed or served in person. The request for hearing shall be submitted to the City Clerk.

(D) Notices under this section shall be deemed properly served and received when the notice has been personally served on the lobbyist or lobbyist organization or sent by registered or certified mail return receipt requested to the last known address of the lobbyist or lobbyist organization.

(E) When the lobbyist, lobbyist organization or person who has been given the fifteen days notice has submitted to the City Clerk a written request for a hearing within the fifteen days allowed in § [2-3-7](#)(C) of this Ordinance, a hearing shall be conducted within thirty (30) consecutive calendar days from the day the City Clerk receives the request for hearing. The hearing shall be conducted by a City Hearing Officer at a time and place designated by the Hearing Officer. All witnesses shall be sworn or affirmed and the hearing shall be recorded. The Hearing Officer shall file all findings, conclusions and final orders with the City Clerk and mail a copy to the City Attorney and parties to the hearing at the time of such filing.

(F) An appeal may be taken from any final order issued by the Hearing Officer by filing a Petition for Writ of Certiorari to the District Court of the Second Judicial District within thirty (30) days after the Hearing Officer files the findings, conclusions and final order with the City Clerk. The petition shall be limited to the record of the proceedings before the Hearing Officer. The petitioner shall file a true and correct copy of the record of the proceedings before the Hearing Officer with the District Court within thirty (30) days after filing the Petition for Writ of Certiorari. The Hearing Officer or City Clerk shall charge the petitioner a reasonable fee for the cost of time and materials to reproduce the record. The decision of the hearing officer shall be affirmed unless the decision is found to be arbitrary, capricious or an abuse of discretion unsupported by evidence in the record taken as a whole or otherwise not in accordance with law.

(G) The Hearing Officer shall prepare a written report of his or her findings and decision within ten (10) City working days after the hearing and shall provide copies to the parties and the City Attorney and shall file the findings, conclusions and the final order with the City Clerk.

(H) Any person who files a statement required by this Ordinance, including but not limited to registration and disclosure statements, after the deadline imposed by this Ordinance or any person who files a false or incomplete statement shall be liable for and shall pay the City at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement until the complete report is filed up to a maximum of five hundred dollars (\$500.00). Any person who knowingly and willfully violates any of the provisions of this Ordinance shall be punished by a fine of up to five hundred dollars (\$500.00) and may have his lobbyist or lobbyist organization registration revoked or his lobbying or lobbying campaigning activities enjoined for up to three (3) years.

(Ord. 62-2001; Am. Ord. 38-2002; Am. Ord. 5-2003)

§ 2-3-8 LOBBYING CAMPAIGN DISCLOSURE, BANK ACCOUNT AND EXPENDITURE REQUIREMENTS AND RETENTION OF RECORDS.

(A) *Bank Accounts.* Each lobbyist organization shall establish one and only one campaign bank checking account for each lobbyist campaign. Each lobbyist campaign shall be for or against only one official action. Lobbyists participating in lobbyist campaigning shall establish one and only one campaign bank checking account for each lobbyist campaign when such lobbyist campaigning activity is not reported by a lobbyist organization. All contributions received for the benefit of lobbyist campaigning shall be deposited into the single checking account required in this section and all disbursements shall be made from that account. Each lobbyist participating in lobbyist campaigning and each lobbyist organization shall file with the bank at which the lobbyist campaign checking account has been established a letter authorizing the release of information concerning that account to the City Attorney or his designee and shall submit a copy of the letter of authorization to the City Clerk. Upon the request of the City Attorney, the lobbyist or lobbyist organization shall provide to the City Attorney all bank records, cancelled checks, and any other financial information relating to the lobbyist campaign as may be requested by the City Attorney. When a contribution is deposited in the single checking account required by this Ordinance, the name of each contributor whose contribution is being deposited shall be recorded on the bank deposit slip.

(B) *Disclosure of Lobbyist Campaigning Activities.*

(1) Each lobbyist or lobbyist organization that conducts any lobbyist campaigning shall file with the City Clerk disclosure statements, each of which shall be cumulative, signed under oath by the lobbyist or treasurer or chairperson of the lobbyist organization, and set forth to 5:00 p.m. of the day preceding the filing of each statement the following:

(a) The total of contributions, which shall include all contributions received, regardless of whether the contribution has been deposited in the bank checking account. This report shall show the amount of each anonymous contribution received.

(b) The name and street address of each contributor, the contributor's principal business or occupation, the name and address of the contributor's employer, and the nature of the contributor's or the contributor's employer's business, together with the total cumulative value contributed by the contributor.

(c) All expenditures made on behalf of the lobbyist campaign, including any reimbursements and the nature thereof, and the name and address of the person or business to whom payment was made.

(d) In kind contributions shall be reported as to both contributions to the lobbyist or lobbyist organization or any expenditure made on behalf of the lobbyist or lobbyist organization. The fair market value of such goods or services shall be reported.

(e) Lobbyist campaign loans as contributions and any subsequent repayment of loans credited against contributions and returned contributions as credits against contributions.

(2) The statements required by this section shall be filed as follows: the first statement shall be filed within five (5) City working days after the registration with the City Clerk that designates the official action the lobbyist or lobbying organization supports or opposes. The first statement shall show all contributions received and all expenditures made at any time in the past up to 5:00 p.m. of the day immediately prior to the date of filing. The first statement shall include all expenditures made and contributions received prior to registering with the City Clerk as well as such expenditures made and contributions received after the registration required under § [2-3-4](#) of this Ordinance. Additional statements shall be filed with the City Clerk every twenty-eight (28) calendar days from the date of the original registration until the lobbyist or lobbying organization provides a final statement. In the event no expenditures have been made and no contributions have been received during any of the required reporting periods, the lobbyist or lobbyist organization shall not be required to file a statement for that time period but shall be required to submit a letter to the City Clerk stating that no contribution and expenditure activity occurred during the reporting period. The final disclosure statement shall include or be accompanied by a sworn statement that all lobbying campaigning has ceased on or before the date of such statement as to the official action designated in the registration. The final statement shall show all expenditures and contributions and may be filed at any time.

(3) *Anonymous Contributions.* No anonymous contributions shall be accepted by a lobbyist or lobbyist organization for purposes of conducting a lobbyist campaign. Anonymous contributions accepted shall be given to a non-profit charity or to the City's General Fund. The transfer of such funds to the non-profit charity or the City's General Fund shall be reported in the disclosure statement due after such transfer.

(4) *Retention of Records.* Each lobbyist and lobbyist organization shall keep financial records of the lobbyist campaign for a period of one year following the certification to the City Clerk that all lobbying campaigning has ceased and shall make available to the City or its auditors for inspection the records of all contributions and expenditures, cancelled checks, invoices, receipts, bank statements, bills of sales, statements of accounts, leases, rental agreement and all other financial records pertinent to the lobbyist campaign.

(Ord. 5-2003)

ARTICLE 4: MUNICIPAL ELECTIONS; PETITIONS

Section

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- [2-4-13](#) Filing of petitions
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- [2-4-15](#) Reinstatement of purged signatures
- [2-4-16](#) Recommendations
- [2-4-17](#) Canvassing of returns
- [2-4-18](#) Absentee voting

§ 2-4-1 SHORT TITLE.

This chapter shall be known and may be cited as the "Municipal Elections Ordinance."

('74 Code, § 1-25-1) (Ord. 18-1993)

§ 2-4-2 PURPOSE.

The purpose of this chapter is to prescribe certain rules of procedure concerning municipal elections by implementing the Constitution of the State of New Mexico and the Charter of the City of Albuquerque [i.e., Article XIII of the Charter] and by supplementing and modifying the statutes of the state and their application to the city. In the event any of the provisions of this chapter conflict with the Constitution of the state or the Charter of the city, the Constitution and Charter shall prevail, and if any provision of this chapter conflicts with any otherwise applicable provision of the general statutes of the state, the provisions of this chapter shall prevail.

('74 Code, § 1-25-2) (Ord. 18-1993)

§ 2-4-3 MUNICIPAL ELECTION CODE.

The Municipal Election Code, Chapter 3, Articles 8 and 9, NMSA 1978, as amended and as supplemented from time to time, shall govern the conduct of all aspects of all municipal elections, except when the Municipal Election Code is silent on a matter, then the State Election Code, Chapter 1, NMSA 1978, shall govern, as appropriate; however, if any provision of either the Municipal Election Code or the State Election Code is inconsistent with the terms of the City Charter, the Charter shall control, or inconsistent with the terms of this chapter, this chapter shall take precedence over the Municipal Election Code and State Election Code and shall control.

('74 Code, § 1-25-3) (Ord. 18-1993)

§ 2-4-4 CITY CLERK DUTIES.

The City Clerk shall administer all municipal elections. The City Clerk may delegate to Deputy City Clerks and Assistant City Clerks any of the duties of the City Clerk in the administration of municipal elections.

('74 Code, § 1-25-4) (Ord. 18-1993)

§ 2-4-5 DATES OF REGULAR, SPECIAL AND RUNOFF ELECTIONS.

(A) Regular municipal elections shall be held on the first Tuesday after the first Monday in October of odd-numbered years.

(B) Any special election that may be called by the City Council shall be held on any day designated by the Council by resolution.

(C) Any runoff election that may be called by the City Council shall be held on any day designated by the Council by resolution consistent with Section 7 of Article II of the City Charter.

('74 Code, § 1-25-5) (Ord. 18-1993)

§ 2-4-6 VOTING MACHINES; PAPER BALLOTS.

Voting machines shall be used in all city elections, except paper ballots may be used in lieu of voting machines for the recording of votes cast in any city election if the decision to use paper ballots is made by the City Council at the time the election resolution is adopted.

('74 Code, § 1-25-6) (Ord. 18-1993)

§ 2-4-7 POSITION OF CANDIDATES ON THE BALLOT.

(A) The names of all certified candidates for office shall be listed on the ballot without party or other designation. The order, on the ballot, of the names of the candidates for each office shall be determined by lot, that is, the name of each candidate for an office or position shall be drawn in a impartial and fair public drawing administered by the City Clerk in accordance with the Municipal Election Code [as set forth in division (B) below]. The City Clerk shall notify, in writing, each candidate for an office or position of the time and place of the public drawing. Such notice shall be given to the candidate or the candidate's authorized representative at the time of filing of the candidate's declaration of candidacy.

(B) The City Clerk, at the time and place of the public drawing, shall place the names of each certified candidate for an office or position on separate pieces of paper which shall be placed in a container. The City Clerk shall then cause the pieces of paper to be drawn from the container one at a time. The positions of the candidates on the ballot shall be determined by the order in which the names of the candidates are drawn from the container.

('74 Code, § 1-25-7) (Ord. 18-1993)

§ 2-4-8 REGULAR MUNICIPAL ELECTION; TAKING OFFICE.

(A) Each candidate, elected to the office of Mayor or Councillor, shall personally appear before the City Clerk at a time and place specified by the City Clerk, but not earlier than after canvass and after the City Clerk has prepared the certificate of election and not later than the administration of the oath of office. When the candidate appears, the City Clerk shall deliver the certificate of election to the candidate and the candidate shall sign a written statement acknowledging receipt of the certificate of election and acknowledging that the candidate is legally qualified to hold office. The City Clerk shall cause a copy of the certificate of election and the written receipt and qualification statement to be filed in the Journal of the Council.

(B) The City Clerk or any other person allowed by law to administer oaths shall administer the oath of office to each candidate who has provided the written receipt and qualifications statement to the City Clerk. A public ceremony repeating the swearing in shall also be conducted

on December 1 following each election. Officials shall be deemed to have taken office on December 1.

(C) If a candidate fails to appear as required in division (A) of this section, then the candidate or the candidate's authorized personal representative shall file an affidavit with the City Clerk, not later than 5:00 p.m. on the fifth day after the time specified by the City Clerk pursuant to division (A) of this section, stating that the candidate was unable to personally appear before the City Clerk as required by division (A) of this section. If such an affidavit is timely filed, the candidate shall appear before the City Clerk not later than 5:00 p.m. on the 15th day following the specified date for the commencement of the term of office to receive the election certificate, file the receipt and qualifications statement and take the oath of office.

(D) If a candidate fails to comply with division (A) of this section prior to the specified date for the commencement of the term of office, then the person holding the office shall remain in office until the candidate takes office or the office is declared vacant.

(E) If a candidate fails to comply with division (A) and division (C) of this section, then the Council shall declare by resolution that the office is vacant.

('74 Code, § 1-25-8) (Ord. 18-1993; Am. Ord. 13-1998)

§ 2-4-9 CHALLENGERS AND WATCHERS.

(A) Challengers, watchers and alternates may be appointed for Special Elections in the following manner:

(1) For recall elections, upon petition filed with the City Clerk by the elective officer subject to the recall election and the chairperson of the measure finance committee that initiated the recall election, those persons may appoint one challenger and one alternate, and one watcher and one alternate for each polling place in the recall election.

(2) For referendum, direct legislation by voter initiative and charter amendment elections, upon petition filed with the City Clerk by the chairperson of the measure finance committee if there is only one such committee, or by both chairpersons if there are two such committees, or by a majority of such chairpersons if there are more than two such committees, those chairpersons may appoint one challenger and one alternate, and one watcher and one alternate for each polling place in the referendum, direct legislation by voter initiative or charter amendment election.

(3) The City Clerk shall designate the form of the petition appointing watchers, challengers and alternates.

(4) The petition appointing watchers, challengers and alternates shall be filed not later than 5:00 p.m. on the fourth day preceding the special election.

(5) Only one challenger and one alternate, and one watcher and one alternate may be appointed for each polling place in any special election.

(B) Challengers, watchers and alternates so appointed shall have the same qualifications and rights as do challengers, watchers and alternates in candidate elections as those qualifications and rights are specified in the Municipal Election Code.

(C) For the purposes of this section, a **MEASURE FINANCE COMMITTEE** is a measure finance committee as defined in the Election Code of the City Charter [see Section 2(j), Article XIII of the City Charter] which has filed all required statements with the Board of Ethics and Campaign Practices.

('74 Code, § 1-25-9) (Ord. 18-1993)

§ 2-4-10 NOTICE OF INTENT.

Prior to circulating a petition pursuant to Sections 1 or 3, Article III, or Article VI of the City Charter, a notice of intent to circulate a petition, containing the signatures of at least five qualified voters, must be filed with the City Clerk. The City Clerk shall designate the form of the notice of intent, which shall include sufficient information to determine if each signer of the notice of intent to circulate a petition is a legally registered voter and a person entitled to vote in city elections. A notice of intent to circulate a petition to recall a Councillor, pursuant to Section 1, Article III of the City Charter, shall be signed only by qualified voters registered as residing in the District which the Councillor represents.

('74 Code, § 1-25-10) (Ord. 18-1993)

§ 2-4-11 FILING OF PROPOSED MEASURES AND CHARTER AMENDMENTS.

(A) *Measures.* Concurrently with the filing of a notice of intent to circulate a petition, pursuant to Section 3, Article III of the City Charter, the proposed measure shall be filed with the City Clerk. The proposed measure shall be complete in all respects.

(B) *Charter Amendments.* Concurrently with the filing of a notice of intent to circulate a petition, pursuant to Article VI, City Charter, the proposed Charter amendment shall be filed with the City Clerk. The proposed Charter amendment shall be complete in all respects.

('74 Code, § 1-25-11) (Ord. 18-1993)

§ 2-4-12 FORM OF PETITION, REQUIREMENTS FOR CIRCULATORS AND VOID PETITION SIGNATURES.

(A) *Findings.* More than 3,100 petition signatures for the October 4, 2005 election submitted to the City Clerk were identified by the Bernalillo County Sheriff's Department as forgeries which creates the need to know who gathers and submits petitions to the City Clerk and the public's right to know if the circulator is paid or a volunteer.

(B) The City Clerk shall designate the form of the petitions to be followed in all petitions to be circulated in accordance with the provisions of Articles II, III and VI of the City Charter. The form established shall include sufficient information to determine if the signer of the petition is a legally registered voter and a person entitled to vote in city elections. Every petition page shall contain (1) a heading which clearly conveys the purpose for signing the petition; (2) columns for the voter's signature, printed name of voter, residence of voter as shown on current voter registration rolls, and the date the voter signed the petition (3) in capital letters in the upper right-hand corner of the face of the petition page the following: "____ Paid Circulator" "____ Unpaid Volunteer". To each petition or group of petitions submitted pursuant to City Charter Article III or VI by a circulator shall be attached a signed and notarized affidavit containing the following: (1) the circulator's actual residence address and if no street address exists, a description of the residence location, city and zip code; (2) the printed or typed name of the circulator; (3) the printed name, address and signature of the person or representative of the organization or other entity that paid the circulator and (4) the following verification signed by the circulator: "I _____ (name of circulator), under penalty of perjury, hereby verify that each of the names on this petition page was signed in my presence and that in my belief each signer was a qualified elector who was registered to vote at the address given as their residence on the date indicated". The City Clerk shall place on the affidavit the petition pages to which the affidavit applies, using the petition page numbers that are designated by the City Clerk. The affidavit shall not be part of the petition. The circulator shall not sign and complete the affidavit at the time the petition is presented to voters for their signatures but shall sign and complete the affidavit before it is submitted to the City Clerk. All requirements for affidavits set forth in this section shall apply to affidavits in support of petitions submitted pursuant to City Charter Article II, provided that such affidavits need be signed only by the candidate or the candidate's treasurer who is registered with the City Clerk, that no name, signature and address of the person or organization that paid the circulator need be provided and that the affidavit need not represent that the petition was signed in the presence of the candidate or the candidate's treasurer. The signature of the City Clerk and date of issuance of the petition shall appear on each petition page. All print on the petition shall be in no less than eleven point type. The circulator of the petition shall indicate whether he or she is a paid circulator or a volunteer on each petition page prior to obtaining any signatures. Petition pages submitted under City Charter Article III, Section 3, Direct Legislation by Voter Initiative, or Article VI, Charter Amendments, shall contain the full text of the measure proposed to be on the ballot or shall attach the full text of the measure to the petition. The measure proposed to be placed on the ballot shall be provided in writing to the voter by the circulator prior to the voter signing the petition. The circulator shall provide the voter the opportunity to read the entire measure to be placed on the ballot or, if requested by the voter, shall read the entire measure to be placed on the ballot to the voter prior to the voter signing the petition.

(C) Signatures obtained in violation of this section are void and shall not be counted by the City Clerk in determining whether a sufficient number of signatures were submitted to the City Clerk. All signatures on a petition page shall be void if (1) the circulator fails to provide the affidavit required in this section, (2) neither "Paid Circulator" nor "Unpaid Volunteer" is checked on the petition page, or (3) the petition page does not contain all of the information required by this section to be on or attached to a petition page. When a petition page meets all of the requirements of this section, the presence of a signature that is invalidated because the person

signing the petition cannot be identified by the City Clerk as currently registered to vote in Albuquerque shall not invalidate other signatures on the petition that were obtained as prescribed by this section.

(D) A "circulator" of a petition shall be any person who presents or otherwise makes available to any person a petition required under the Albuquerque City Charter or Ordinances of the City of Albuquerque for the purpose of requesting or obtaining that person's signature on such petition.

(E) The City Clerk shall not approve the form of a petition proposing a measure or a Charter amendment if the proposed measure or Charter amendment has not been filed pursuant to this section.

('74 Code, § 1-25-12) (Ord. 18-1993; Am. Ord. 28-2006)

§ 2-4-13 FILING OF PETITIONS.

(A) The City Clerk shall accept a petition for filing only if the City Clerk has approved the form of the petition prior to circulation of the petition.

(B) Persons submitting petitions in accordance with Section 3, Article II of the City Charter, shall do so not more than 82 days nor less than 67 days before the date of the election.

(C) Persons submitting petitions in accordance with Section 1 or 3, Article III of the City Charter, or Article VI of the City Charter, shall do so within the 60-day limitation; provided, that parts of the petition may be submitted in three stages:

(1) The first part not more than 20 days after the filing of the notice of intent to circulate the petition;

(2) The second part not more than 40 days after the filing of the notice of intent to circulate the petition; and

(3) The third and final part of the petition shall be filed no later than 60 days after the filing of the notice of intent to circulate the petition.

(D) Persons submitting petitions in accordance with Section 2, Article III of the City Charter, shall do so within the 35-day limitation; provided, that parts of the petition shall be submitted in two stages:

(1) The first part not more than 15 days after the filing of the notice of intent to circulate a petition; and

(2) The second and final part of the petition shall be filed no later than 35 days after the filing of the notice of intent to circulate the petition.

(E) All such petitions shall be filed in the City Clerk's office during the regular business hours of that office. If the last day to file a petition falls on a Saturday, Sunday or city holiday, the time in which to file a petition shall be deemed to be extended to 5:00 p.m. on the next full business day following the Saturday, Sunday or holiday.

('74 Code, § 1-25-13) (Ord. 18-1993)

§ 2-4-14 VALIDITY OF PETITION.

When a petition is circulated pursuant to the procedures set forth in the City Charter, the validity of the petition shall be determined by the City Clerk in accordance with Section 3-1-5 NMSA 1978, as amended and as supplemented from time to time. It shall be the duty of the City Clerk to begin the verification process of the validity of the petition and any portion thereof upon being filed in the City Clerk's Office. The results of the validation process shall become a matter of public record and a list of the names, addresses and signatures which were purged from the petition shall be posted in the office of the City Clerk.

('74 Code, § 1-25-14) (Ord. 18-1993)

§ 2-4-15 REINSTATEMENT OF PURGED SIGNATURES.

Any person whose signature has been purged from a petition shall have the opportunity to have the person's signature reinstated in accordance with Section 3-1-5 NMSA 1978. The widest latitude is to be given for the manner in which a person whose signature is to be purged from a petition may have the person's name reinstated.

('74 Code, § 1-25-15) (Ord. 18-1993)

§ 2-4-16 RECOMMENDATIONS.

Within a reasonable time after the holding of a municipal election the City Clerk shall make appropriate recommendations to the Mayor and the City Council for modification of election procedures designed to insure fairness and accuracy, protect the secrecy of the ballot and reduce the administration costs and burdens of conducting elections.

('74 Code, § 1-25-16) (Ord. 18-1993)

§ 2-4-17 CANVASSING OF RETURNS.

Election returns shall be canvassed in accordance with Section 3-8-53 NMSA 1978, the Municipal Election Code, except that the matters to be performed shall be completed not later than 5:00 p.m. on the seventh day following the election.

(Ord. 13-1998)

§ 2-4-18 ABSENTEE VOTING.

Absentee voting shall be conducted in accordance with Chapter 3, Article 9, NMSA 1978 with the following exceptions. The absent precinct board shall convene three days prior to the day of the election at which time the municipal clerk shall deliver to the absent voter precinct board the absentee ballot register and the absent voter ballots received by the clerk. The absent voter precinct board shall immediately begin the process of voter name verification from the official mailing envelope to the absentee voter list. As the process is completed, the official mailing envelope shall be returned to the locked ballot boxes and secured by the absent voter precinct board until 7:00 a.m. on election day at which time the absent voter precinct board may begin opening the official mailing envelopes and the inner envelopes and begin the counting and tallying of the results. Prior to 7:00 p.m. on election day, the municipal clerk shall deliver any ballots received on election day to the absent voter precinct board and the precinct board shall note the receipt of ballots in the absent ballot register and on the absentee voter list. For any all-mailed ballot election conducted by the city pursuant to the state Mail Ballot Election Act, the municipal clerk shall mail the ballots no sooner than five working days after the County Clerk delivers to the municipal clerk a corrected and updated voter list. The municipal clerk shall not count unsigned ballots, and the municipal clerk shall not attempt to locate voters who returned unsigned ballots, nor make arrangements for voters to sign unsigned ballots after they have been returned to the city. City employees, other than those employed by the municipal clerk's office, shall not handle ballots or assist the municipal clerk with the election in any way during an all-mailed ballot election.

(Ord. 13-1998; Am. Ord. 40-1999)

ARTICLE 5: PUBLIC INTEREST ORGANIZATIONS

Section

[2-5-1](#) Applicability

[2-5-2](#) Open meetings

[2-5-3](#) Notice

[2-5-4](#) Exceptions

[2-5-5](#) Invalid actions

§ 2-5-1 APPLICABILITY.

Any nonprofit organization in the city which receives funds appropriated by the city, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the city, is hereby declared to be vested with a public interest and subject to the provisions of this article.

('74 Code, § 12-8-1) (Ord. 51-1979)

§ 2-5-2 OPEN MEETINGS.

All meetings of a quorum of members of the governing body of an organization described in § [2-5-1](#) above are declared to be public meetings open to the public at all times, except as otherwise provided by law or the provisions of this article.

('74 Code, § 12-8-2) (Ord. 51-1979)

§ 2-5-3 NOTICE.

Any such meetings at which the discussion or adoption of any proposed resolution for formal action occurs, and at which a majority or quorum of the governing body of the organization is in attendance, shall be held only after reasonable notice to the public. The organization shall determine at least annually in a public meeting what notice shall be reasonable. Such minutes as may reasonably be required by the organization shall be recorded and be open to the public inspection.

('74 Code, § 12-8-3) (Ord. 51-1979)

§ 2-5-4 EXCEPTIONS.

(A) The provisions of this article shall not apply to adjudicatory or personnel matters of the organization.

(B) (1) Loan programs involving money appropriated by the city, administered by an organization covered by § [2-5-1](#) above are exempt from the provisions of this article except that for any loan in the amount of \$30,000 or more, the organization shall convey the following information to the Mayor within seven days after the organization's approval of the loan:

- (a) Name of recipient (including principals of any corporation);
- (b) Address of the recipient;
- (c) Amount of loan;
- (d) Conditions and terms of loan; and
- (e) Location of property affected by loan.

(2) The Mayor shall submit the information to the City Council for review at its next regular meeting. Any organization covered by the provision of § [2-5-1](#) above administering loan programs involving money appropriated by the city shall submit the information described in this subsection for all loans in the form of a semiannual report to the Mayor and City Council.

(C) An organization covered by the provisions of § [2-5-1](#) above which receives funds appropriated by the city, but which does not include an elected official, or an appointed administrative official, as a representative of the city, as a member of its governing body, may have its meetings dealing with an agenda not involving funds appropriated by the city exempted from the provisions of this article as follows:

(1) The agenda must be given public notice under the provisions of § [2-5-3](#) of this article;

(2) The agenda not involving funds appropriated by the city must be a separate agenda from an agenda involving funds appropriated by the city;

(3) The decision of the governing body to close the meeting must be made in an open meeting.

('74 Code, § 12-8-4) (Ord. 51-1979)

§ 2-5-5 INVALID ACTIONS.

Any action or resolution of the organization involving funds appropriated by the city, is invalid unless taken or made at a meeting held in accordance with the requirements of this article.

('74 Code, § 12-8-5) (Ord. 51-1979)

ARTICLE 6: PUBLIC BOARDS, COMMISSIONS AND COMMITTEES

Section

Part 1: General Provisions

- [2-6-1-1](#) Short title
- [2-6-1-2](#) Definition
- [2-6-1-3](#) Membership
- [2-6-1-4](#) Organization
- [2-6-1-5](#) Applicability

Part 2: Boards, Commissions and Committees Defense and Indemnification

- [2-6-2-1](#) Short title
- [2-6-2-2](#) Purpose
- [2-6-2-3](#) Definition
- [2-6-2-4](#) Defense and indemnification

Part 3: Information Services Committee

- [2-6-3-1](#) Committee created
- [2-6-3-2](#) Duties, responsibilities, and powers
- [2-6-3-3](#) Process

Part 4: Records Analysis and Disposal Committee

- [2-6-4-1](#) Policy
- [2-6-4-2](#) Committee
- [2-6-4-3](#) Definition
- [2-6-4-4](#) Procedure

[2-6-4-5](#) Correlation

[2-6-4-6](#) Further recommendation

Part 5: Joint Advisory Commission on Persons with Disabilities

[2-6-5-1](#) Membership

[2-6-5-2](#) Terms

[2-6-5-3](#) Powers and duties

[2-6-5-4](#) Organization

[2-6-5-5](#) Assistance

Part 6: Commission on Indian Affairs

[2-6-6-1](#) Intent

[2-6-6-2](#) Creation

[2-6-6-3](#) Terms and appointment

[2-6-6-4](#) Powers and duties

Part 7: Youth Advisory Council

[2-6-7-1](#) Intent

[2-6-7-2](#) City of Albuquerque youth advisory council created

[2-6-7-3](#) Membership

[2-6-7-4](#) Duties

[2-6-7-5](#) Organization

Part 8: Water Protection Advisory Board

[2-6-8-1](#) Short title

[2-6-8-2](#) Definitions

[2-6-8-3](#) Purpose

- [2-6-8-4](#) Board created
- [2-6-8-5](#) Organization; meetings
- [2-6-8-6](#) Staff
- [2-6-8-7](#) Duties and powers of the Board

[Part 9: Albuquerque Commission on Immigrant Affairs and Services](#)

- [2-6-9-1](#) Purpose
- [2-6-9-2](#) Membership
- [2-6-9-3](#) Terms of office
- [2-6-9-4](#) Organization
- [2-6-9-5](#) Responsibilities, powers and duties
- [2-6-9-6](#) Assistance and staff support

[Part 10: New Mexico Veterans Memorial Review Committee](#)

- [2-6-10-1](#) Purpose
- [2-6-10-2](#) Definitions
- [2-6-10-3](#) Findings
- [2-6-10-4](#) The New Mexico Veterans Memorial Review Committee created
- [2-6-10-5](#) Authorization of other permanent memorials and policies for the creation and installation of memorials at the New Mexico Veterans Memorial

Cross-reference:

Accountability in Government Oversight Committee, see § 2-10-5

[Administrative Real Property Review Board, see § 5-2-2\(A\)](#)

[Airport Advisory Board, see § 7-1-2-1 et seq.](#)

[Albuquerque Arts Board, see § 10-5-3](#)

Albuquerque Cable Television Advisory Board, see § 13-5-2-1

Albuquerque Sister-City Board, see § 10-7-1

Anderson/Abruzzo International Balloon Museum Board of Trustees, § 10-4-5-1

Beautification Committee, § 14-13-3-5

Biological Park Advisory Board, § 10-2-2-1 et seq.

City Labor-Management Relations Board, see § 3-2-15

City Purchasing Standards and Specifications Committee, see § 5-5-8

Commission on Alcohol and Substance Abuse, see §§ 9-1-1-1 et seq.

Conference Committee on the Budget, see § 2-11-11

Debarment Appeals Board, see § 5-7-5

Development Commission, see § 14-8-6-1 et seq.

Energy Conservation Council, see § 14-8-5-1 et seq.

Environmental Planning Commission, see §§ 14-13-3-1 et seq.

Explora Science Center Advisory Board, see § 10-4-2-2

Government Cable Channel Board of Directors, see § 13-5-2-2

Greater Albuquerque Bicycling Advisory Committee, see § 14-13-3-6

Greater Albuquerque Recreational Trails Committee, see § 14-13-3-8

Hispanic Cultural Center Advisory Committee, see § 10-4-4-1 et seq.

Housing and Neighborhood Economic Development Committee, see § 4-2-2-4(A)

Human Rights Board, see §§ 11-3-4 - 11-3-6

Investment Committee, see § 4-1-9

Joint Air Quality Control Board, see § 9-5-1-3

Landmarks and Urban Conservation Commission, see § 14-12-5

Library Advisory Board, see § 10-6-1

Lodgers' Tax Advisory Board, see § 4-4-13

Metropolitan Environmental Health Advisory Board, see §§ 9-5-6-1 et seq.

Metropolitan Parks and Recreation Advisory Board, see §§ 10-1-2-1 et seq.

Metropolitan Redevelopment Agency, see § 14-8-4-1 et seq.

Municipal Golf Advisory Board, see § 10-8-1

Neighborhood Associations, see § 14-8-2-1 et seq.

Old Town Portal Market Advisory Board, see § 13-3-2-7

Open Space Advisory Board, see § 14-13-3-7

Performing Arts Center Board of Trustees, see § 10-4-3-1 et seq.

Personnel Board, see § 3-1-4

Public Museum Board of Trustees, see § 10-4-1-3

Police Oversight Commission, see §§ 9-4-1-1 et seq.

Risk Management Claims Review Board, see § 2-8-2-6

Selection Advisory Committee for professional services, see §§ 14-7-2-1 et seq.

Supplemental Retirement Fund Committee, see § 3-6-3

Technical Standards Committee, see § 14-5-2-15

Urban Enhancement Trust Fund Citizens Committee, see § 4-2-1-3(D)

Urban Renewal Agency, see § 14-8-3-1 et seq.

(Zoning) Board of Appeals for Special Zoning Exceptions, see §§ 14-8-7-1 et seq.

PART 1: GENERAL PROVISIONS

§ 2-6-1-1 SHORT TITLE.

Sections [2-6-1-1](#) et seq. shall be known and may be cited as the "Public Boards, Commissions and Committees Ordinance."

('74 Code, § 1-12-1) (Ord. 55-1992)

§ 2-6-1-2 DEFINITION.

For the purpose of §§ [2-6-1-1](#) et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC BOARDS, COMMISSIONS and COMMITTEES. Every board, commission, committee and other similar body whose meetings are required by the Open Meetings Act, Chapter 10, Article 15 NMSA 1978, as amended and as supplemented from time to time, to be open to the public.

('74 Code, § 1-12-2) (Ord. 55-1992)

§ 2-6-1-3 MEMBERSHIP.

The following shall govern the qualifications, appointment and conduct of members of the public boards, commissions and committees of the city; provided that the provisions relating to qualifications and appointment of members of public boards, commissions and committees of the city shall apply only to members who are appointed after the effective date of §§ [2-6-1-1](#) et seq. and that any member of any public board, commission or committee in existence on the effective date of §§ [2-6-1-1](#) et seq. shall complete the term of office for which such member was appointed, unless said member's conduct is in violation of §§ [2-6-1-1](#) et seq.

(A) *Qualifications.*

(1) Each person appointed to any public board, commission or committee shall normally be a resident of the city.

(2) No person regularly employed on a full-time basis by the city shall be appointed to any public board, commission or committee; provided that the Mayor, Councillors or administrative officers of the city may be appointed as ex officio members.

(3) No member of the immediate family of any elected city official shall be appointed to any public board, commission or committee.

(4) No person shall be a member of more than one public board, commission or committee at any one time.

(5) No person shall serve more than two consecutive terms on any public board, commission or committee; provided that if a person is appointed to fill an unexpired term of another person, that term shall not be considered a term for the purpose of this limitation if the time remaining in the term at the time of the appointment is one year or less.

(B) *Appointments.*

(1) The Mayor, with the advice and consent of the Council, shall appoint the members of the public boards, commissions and committees. An appointment is not effective until Council approves it.

(2) The members of each public board, commission or committee shall be appointed from the broadest possible base of the community at large and, to the fullest extent possible, the Mayor will seek information from interest groups as to potential appointees.

(3) The Mayor shall send written notice of the appointment to the appointee, which notice shall clearly state that such appointment is made subject to all the provisions outlined herein, and the member so appointed may be removed by the Mayor for violation of any of the provisions hereby established.

(4) Each appointment shall be accepted in writing by the appointee confirming that such appointee accepts the policies outlined herein as a condition precedent to such appointee's appointment and holding office.

(5) Each appointment shall be for a term of three years unless the appointment is to fill a vacancy. The initial terms of members of newly established public boards, commissions and committees shall be staggered and shall be for either one, two or three years.

(6) Every member, unless removed as provided herein, shall hold office until a successor has been duly qualified unless the Council has voted not to approve that member for a reappointment, in which case, the member shall not serve beyond the date the member's current term expires or the date the Council votes not to approve the member, whichever is later.

(C) *Conduct.*

(1) Any member of a public board, commission or committee may be removed from office by the Mayor or by an affirmative vote of two-thirds of all Councillors after due notice and hearing if such member has missed three consecutive meetings or has been absent from more than 50% of the meetings held during any twelve consecutive months.

(2) Any member of a public board, commission or committee may be removed from office by the majority of Mayor or by an affirmative vote of two-thirds of all Councillors after due notice and hearing if such member has violated any law, regulation or charter provision, or for other good cause such as the intentional failure to carry out the duties of the board, commission or committee.

(D) *Number of Members.* Except as may be expressly provided otherwise in the ordinance

or resolution establishing a specific public board, commission or committee, each public board, commission and committee shall consist of five members.

('74 Code, § 1-12-3) (Ord. 54-1975; Am. Ord. 60-1975; Am. Ord. 55-1992; Am. Ord. 35-2003; Am. Ord. 57-2003)

§ 2-6-1-4 ORGANIZATION.

The following provisions shall govern the organizational structure of the public boards, commissions and committees.

(A) *Officers.*

(1) The minimum number of officers of any public board, commission or committee shall be not less than two officers (such as the Chairperson and Vice-Chairperson) and such other officers as such public board, commission or committee may deem necessary.

(2) All officers shall be elected by the members for a term of one year and no officer shall serve more than two consecutive terms.

(B) *Meetings.*

(1) All meetings of any public board, commission or committee shall be open to the public and insofar as possible, shall be held at a city-owned facility.

(2) Reasonable notice shall be given to the public prior to any meeting of any public board, commission or committee. At least once a year, each public board, commission or committee shall determine what is reasonable notice to the public; provided that in no event shall notice be less than the notice required for Council meetings.

(3) Minutes shall be kept of each meeting and filed with the City Clerk and copies of the minutes shall be sent to the Mayor.

(4) Each public board, commission or committee shall meet at least quarterly.

(5) A majority of all the members of a public board, commission or committee shall constitute a quorum for the transaction of business. A motion shall carry upon the affirmative vote of the majority of the members present at any meeting.

(C) *Rules and Regulations.*

(1) Each public board, commission or committee may promulgate such rules and regulations for its conduct as may be deemed necessary.

(2) If an ordinance or resolution establishing a public board, commission or committee provides that the public board, commission or committee may adopt rules and regulations

pertaining to matters within its jurisdiction, the public board, commission or committee shall comply with the following procedures in adopting such rules and regulations.

(a) Notice of the public board, commission or committee's intention to consider the adoption of a rule or regulation shall be given by posting in the lobby of City Hall and by giving written notice to the Mayor. Such notice shall be given at least 14 days prior to the meeting at which the proposed rule or regulation will be considered and shall be in addition to the notice to be given to the public pursuant to division (B)(2) hereof. All such notices shall state the time and location of the meeting and contain a brief description of the proposed rule or regulation.

(b) The meeting, at which the proposed rule or regulation is considered, shall be open to the public and any person may give testimony in favor of or in opposition to the proposed rule or regulation, whether such testimony be given orally or in writing. In considering the proposed rule or regulation, the public board, commission or committee shall give due consideration to all such testimony.

(c) Notwithstanding division (B)(5) hereof, a proposed rule or regulation shall be deemed to have been adopted by the public board, committee or commission upon the affirmative vote of a majority of the entire membership of the public board, commission or committee plus one additional member thereof.

(d) All rules and regulations adopted by a public board, commission or committee shall be promptly filed with the City Clerk and shall bear the signature of the presiding officer.

(D) *Report.* At least once each year, every public board, commission or committee shall present a written report to the Mayor and Council of its activities for the past year and any recommendations as may be deemed appropriate.

('74 Code, § 1-12-4) (Ord. 54-1975; Am. Ord. 60-1975; Am. Ord. 55-1992)

§ 2-6-1-5 APPLICABILITY.

(A) The provisions contained herein shall apply to every public board, commission and committee of the city. In the event that any of the provisions contained herein conflict with any specific provision of any ordinance or resolution establishing a specific public board, commission or committee, such specific provision shall control.

(B) The provisions contained herein shall not apply to those boards, commissions, committees, task forces and other similar bodies established by city officials or employees but not appointed or consented to by the City Council, provided that such groups have no authority to make city policy, including the power to make rules and regulations.

(C) The prohibition contained in § [2-6-1-3](#)(A)(2) shall not apply to the appointment of city employees to those public boards, commissions and committees which are established to perform a specific task or tasks and submit a report and which have a duration of not more than one year.

('74 Code, § 1-12-5) (Ord. 54-1975; Am. Ord. 60-1975; Am. Ord. 55-1992)

PART 2: BOARDS, COMMISSIONS AND COMMITTEES DEFENSE AND INDEMNIFICATION

§ 2-6-2-1 SHORT TITLE.

Sections [2-6-2-1](#) et seq. shall be known and may be cited as the "Boards, Commissions and Committees Defense and Indemnification Ordinance."

('74 Code, § 1-23-1) (Ord. 7-1991)

§ 2-6-2-2 PURPOSE.

The purpose of §§ [2-6-2-1](#) et seq. is to establish a policy of the city that the city will defend and indemnify members of the city's boards, commissions and committees from claims brought against such members while acting within the scope of the members' duties, responsibilities and service on city boards, commissions and committees.

('74 Code, § 1-23-2) (Ord. 7-1991)

§ 2-6-2-3 DEFINITION.

For the purpose of §§ [2-6-2-1](#) et seq. the following definition shall apply unless the context clearly indicates or requires a different meaning.

MEMBER. A member of any of the city's boards, commissions and committees established by Charter, ordinance or resolution.

('74 Code, § 1-23-3) (Ord. 7-1991)

§ 2-6-2-4 DEFENSE AND INDEMNIFICATION.

(A) The city shall provide a defense, including costs and attorneys' fees, for a member when liability is sought for:

(1) Any tort alleged to have been committed by the member while acting within the scope of the member's duties, responsibilities and service on a city board, commission or committee; or

(2) Any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by the member while acting within the scope of the member's duties, responsibilities and service on a city board, commission or committee.

(B) The city shall pay any settlement or final judgment entered against a member for:

(1) Any tort alleged to have been committed by the member while acting within the scope of the member's duties, responsibilities and service on a city board, commission or committee; or

(2) Any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico when alleged to have been committed by the member while acting within the scope of the member's duties, responsibilities and service on a city board, commission or committee.

(C) The city shall have the right to recover from a member of the city's boards, commissions and committees the amount expended by the city to provide a defense and pay a settlement agreed to by the member or to pay a final judgment if it is shown that while acting within the scope of the member's duties, responsibilities and service, the member acted fraudulently or with actual intentional malice causing bodily injury, wrongful death or property damage resulting in the settlement or final judgment.

('74 Code, § 1-23-4) (Ord. 7-1991)

PART 3: INFORMATION SERVICES COMMITTEE

§ 2-6-3-1 COMMITTEE CREATED.

(A) An Information Services Committee is hereby created.

(B) The Committee shall be composed of seven members serving staggered terms; terms shall be three years, except the initial terms shall vary in length so that at least one position of the Committee shall expire each year. Four members shall be city employees, no two of whom shall be from the same department; one shall be the Director of the Information Systems Division of the Department of Finance and Management and one shall be from City Council staff. Three members shall not be city officials or employees; they shall be people knowledgeable in information systems, who would have no conflict of interest or likely future conflict of interest in making recommendations and decisions as members of the Committee.

(C) The chairmanship of the Committee shall annually rotate between the two city members other than the Director of Information Systems Division, or the City Council staff member.

(D) Matters concerning membership and organization shall be as set forth in [§§ 2-6-1-1 et seq.](#) unless otherwise provided herein.

(E) The Committee should report, administratively, to the Mayor. The Mayor shall provide staff support to the Committee.

('74 Code, § 1-21-1) (Ord. 46-1990)

§ 2-6-3-2 DUTIES, RESPONSIBILITIES, AND POWERS.

(A) The Committee shall develop and recommend to the City Council for adoption an Information Services Master Plan for the evaluation of information technology within the city government; the Committee shall recommend amendments of the Master Plan when appropriate. The Master Plan should be amended by the City Council at appropriate intervals to keep it current, but no amendment may be made without the evaluation of the Committee. The Master Plan should contain city-wide objectives such as the following:

- (1) Data and software within the city will be shared to the extent possible; and
- (2) The city will develop an integrated communications network for delivery of data, voice, image, and video information.

(B) The Committee shall study and establish standards governing the city's acquisition and use of information technology. These city-wide standards should include but not be limited to the following:

- (1) Methodologies for project management and system development;
- (2) Centrally coordinated spending for equipment, software contracts, and consultants, to assure consistency with the city's Information Services Master Plan;
- (3) Compatibility standards for equipment, software languages, distributed-processing policy, security control, and data base management;
- (4) Standards for all network services and interface requirement;
- (5) Data base standards for compatibility, consistency, retrieval, and consolidation;
- (6) Standards for quality assurance governing consulting, advising, monitoring, and auditing distributed processing activities;
- (7) Standards for disaster recovery; and
- (8) Standards for an information systems security program.

(C) The Committee shall review and, working with the Chief Administrative Officer, assure that a data administration function is implemented and is effectively being performed.

(D) Each city department shall prepare an information systems plan annually and submit it to the Committee for approval. In addition to reviewing these annual plans, the Committee shall also review, on an ongoing basis, all proposed information services activities for adherence to the Information Services Master Plan and to city-wide standards. No significant change in type or level of information services activities and no significant information services initiative shall

occur without the approval of the Committee. The Committee shall establish a minimum level of information services activities which shall require review and approval by the Committee.

('74 Code, § 1-21-2) (Ord. 46-1990)

§ 2-6-3-3 PROCESS.

(A) *Budgeting.* Information systems projects should come before the Committee prior to presentation to the City Council as part of a proposal for the operating budget or capital improvements program; this includes joint city-county projects. While the Mayor has the right to make a proposal contrary to the advice of the Committee, the action of the Committee shall be conveyed to the Council along with each information systems project proposed for funding.

(B) *Appeal.* Binding decisions of the Committee may be appealed to the Mayor by filing an appeal within 15 days of the Committee decision. The Mayor shall decide the matter within 15 days.

('74 Code, § 1-21-3) (Ord. 46-1990)

PART 4: RECORDS ANALYSIS AND DISPOSAL COMMITTEE

§ 2-6-4-1 POLICY.

The City Council recognizes its responsibility to encourage the modernization and development of business methods in City government which result in efficiency and improvement of service. The Council

also recognizes its responsibility for the retention of records for the orderly processes of government in the event that disaster should reduce records and procedures to chaos.

('74 Code, § 1-5-1) (Ord. 1796)

§ 2-6-4-2 COMMITTEE.

The Mayor is hereby authorized and directed to establish a committee for the study and disposal of City government records, papers and instruments of every kind and nature.

('74 Code, § 1-5-2) (Ord. 1796)

§ 2-6-4-3 DEFINITION.

For the purpose of §§ [2-6-4-1](#) et seq. the following definition shall apply unless the context clearly indicates or requires a different meaning.

PUBLIC RECORDS. All books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or

appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material made or acquired solely for reference, circulation or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included.

('74 Code, § 1-5-3) (Ord. 1796)

§ 2-6-4-4 PROCEDURE.

The committee shall proceed expeditiously to analyze the public records of the City in an orderly manner and to perform the following functions:

(A) Classify public records as distinguished from excluded public records hereinabove described.

(B) Authorize the destruction of retained items which do not come within the fair meaning of "public records" above described and prepare concise and accurate records of such action.

(C) Analyze the public records and insofar as possible determine:

- (1) What records if any are retained by law;
- (2) What records, if any, are retained by ordinance;
- (3) For what period such records are required to be retained;
- (4) What other items should be retained and in what way or place, having in mind the possibility of war or other disaster;
- (5) What records would be copied for further preservation; and
- (6) Methods by which unnecessary duplication of records and maintenance thereof may be avoided.

('74 Code, § 1-5-4) (Ord. 1796)

§ 2-6-4-5 CORRELATION.

In the performance of this duty the Mayor is directed to correlate this program where possible with that of the State Commission of Public Records.

('74 Code, § 1-5-5) (Ord. 1796)

§ 2-6-4-6 FURTHER RECOMMENDATION.

The committee is directed to recommend to the City Council as soon as possible such further action in this matter as is consistent with efficient record keeping.

('74 Code, § 1-5-6) (Ord. 1796)

PART 5: JOINT ADVISORY COMMISSION ON PERSONS WITH DISABILITIES

§ 2-6-5-1 MEMBERSHIP.

The Joint Advisory Commission on Persons with Disabilities, hereinafter referred to as the "Commission," shall be composed of ten members to be appointed as follows:

(A) Four members shall be residents of Bernalillo County and shall be appointed by the Bernalillo County Commission;

(B) Six members shall be residents of the City of Albuquerque and shall be appointed by the Mayor with the advice and consent of the Council;

(C) At least two of the members appointed by the Bernalillo County Commission and four of the members appointed by the Mayor shall be persons with a disability.

(Ord. 37-1994)

§ 2-6-5-2 TERMS.

The terms of the members of the Commission shall be for three years and shall begin on October 1; the years in which terms begin shall be staggered, consistent with the continuing Commission terms created under prior resolutions; no more than four members' terms shall terminate in any given year.

(Ord. 37-1994)

§ 2-6-5-3 POWERS AND DUTIES.

The powers and duties of this Commission shall be as follows:

(A) The Commission shall study the problems and the programs for people with disabilities, including, but not limited to, those in the areas of housing, human rights, employment, recreation and transportation.

(B) The Commission shall review and recommend program funding sources.

(C) The Commission shall advise the Mayor, City Council and Bernalillo County Commission on programs to provide services to persons with disabilities, including but not limited to the areas outlined in division (A) above. The Commission shall make

recommendations regarding short- and long-range priorities in these areas, regarding a comprehensive program for persons with disabilities and regarding coordination of programs funded by different sources.

(D) The Commission shall promote the understanding of the problems of and the programs for persons with disabilities among public officials, volunteer agencies and residents of the city and county.

(E) The Commission shall comply with all applicable policies, ordinances, resolutions, rules and regulations of the City of Albuquerque and the County of Bernalillo. Except as otherwise provided herein, the city members of the Commission shall be governed by the provisions of §§ [2-6-1-1](#) et seq., the Public Boards, Commissions and Committees Ordinance.

(F) The Commission shall cooperate with other boards, commissions and committees to further the cause of persons with disabilities.

(G) The Commission shall make written annual reports to the Bernalillo County Commission, City Council and Mayor.

(Ord. 37-1994)

§ 2-6-5-4 ORGANIZATION.

The organizational structure of the Commission shall be as follows:

(A) *Officers.*

(1) The minimum number of officers of the Commission shall be not less than two officers (such as the Chairperson and Vice-Chairperson), one of whom shall be a County-appointed member, plus such other officers as the Commission may deem necessary.

(2) All officers shall be elected by the members for a term of one year, and no officer shall serve more than two consecutive terms.

(B) *Meetings.*

(1) All meetings of the Commission shall be open to the public and insofar as possible shall be held at a facility owned either by the city or the county.

(2) Reasonable notice shall be given to the public prior to any meeting of the Commission. At least once a year, the Commission shall determine what is reasonable notice to the public of its meetings; provided that in no event shall notice be less than the notice required for Council meetings.

(3) Minutes shall be kept of each meeting and filed with the City Clerk, and copies of the minutes shall be sent to the Mayor and the Bernalillo County Commission.

(4) The Commission shall meet at least quarterly.

(5) A majority of all the members of the Commission shall constitute a quorum for the transaction of business. A motion shall carry upon the alternative vote of the majority of the members present at any meeting.

(C) The Commission may promulgate such rules and regulations for its conduct as may be deemed necessary.

(Ord. 37-1994)

§ 2-6-5-5 ASSISTANCE.

Upon request, the County Manager and the Mayor shall provide assistance for such staff and resources as is feasible and within existing budget limitations.

(Ord. 37-1994)

PART 6: COMMISSION ON INDIAN AFFAIRS

§ 2-6-6-1 INTENT.

It is the purpose of §§ [2-6-6-1](#) et seq., to promote the health, safety and general welfare of its citizenry through the creation of a Commission on Indian Affairs to serve as an advocate of Indian affairs to investigate, study and consider the subject of Indian conditions within the City of Albuquerque, including, but not limited to, matters of employment, education, economy, health, environment, government, and access to services in the City.

(Ord. 20-1995)

§ 2-6-6-2 CREATION.

There is hereby created the “Commission on Indian Affairs” of the City, consisting of five members, all of whom shall be residents of the City. Except as provided in §§ [2-6-6-1](#) et seq., the qualifications, appointment and conduct of the members of the Commission and the organizational structure of the Commission shall be governed by § [2-6-1-1](#), et seq. ROA 1994.

(Ord. 20-1995)

§ 2-6-6-3 TERMS AND APPOINTMENT.

The Mayor, with the advice and consent of the Council, shall appoint the members of the Commission. The term of office of each member of the Commission shall be three years; of the board members first named, however, two shall have terms ending October 1, 1995, two shall have terms ending October 1, 1996, and one shall have a term ending October 1, 1997. The Mayor shall determine which member is to serve which term.

(Ord. 20-1995)

§ 2-6-6-4 POWERS AND DUTIES.

The Board shall:

(A) Serve as an advocate of Indian affairs by acting as a liaison between the City and the Indian community in order to bring Indian concerns to the City's attention; by educating the City on the problems of Indian citizens of Albuquerque; by researching the economic conditions of Indians in Albuquerque and the economic contributions of Indians to the City; and by researching the social, economic, environmental, health, educational, and governmental problems which affect Indian people.

(B) Improve the employment opportunities of Indians in the City's public and private sectors by monitoring the employment of Indians in the work force and encouraging parity of employment; by developing methods to enable employers to recruit, hire, train and promote Indians; and by developing and maintaining a hiring pool of qualified Indians for employment consideration.

(C) Work with the Indian community to increase awareness of and access to services and programs in the City of Albuquerque; and monitor statistical data and advise the Mayor regarding the number of Indian citizens accessing City services.

(D) Support economic development for Indian entrepreneurs including educating Indian business enterprises as to the process(es) for acquiring government contracts.

(E) Make recommendations to the Mayor for placement of Indians on City boards, committees and commissions.

(F) Provide an opportunity for the presentation and exchange of ideas in respect to Indian affairs of the City by all interested persons.

(G) Submit annually a written report of its activities and an evaluation of the effectiveness of §§ [2-6-6-1](#) et seq. to the Mayor and the City Council with recommendations for changes.

(Ord. 20-1995)

PART 7: YOUTH ADVISORY COUNCIL

§ 2-6-7-1 INTENT.

The intent of §§ [2-6-7-1](#) et seq. is to formalize the way the City collects information from youth about City programs and policies that affect them by creating and describing the powers of the City of Albuquerque Youth Advisory Council.

(Ord. 4-1997)

§ 2-6-7-2 CITY OF ALBUQUERQUE YOUTH ADVISORY COUNCIL CREATED.

There is hereby created a Youth Advisory Council (Council) which shall be composed of up to twenty-one (21) youth representatives, 13 to 20 years of age, who reside within the Albuquerque City limits.

(Ord. 4-1997)

§ 2-6-7-3 MEMBERSHIP.

The members of the City Youth Advisory Council shall be selected as follows:

(A) Once each year, an open call for youth volunteers to apply for the Youth Advisory Council shall be publicized and promoted by the City.

(B) Youth responding to the open call shall submit a one-page essay describing why they should be selected for the Council. A parent or guardian of the responding youth shall be required to sign the essay, indicating their support of the application.

(C) From the letters submitted from the open call, the Mayor, with the advice and consent of the City Council, shall appoint youth to serve on the Youth Advisory Council.

(D) Terms of office shall be three years. The initial group of members shall have staggered terms, such that one-third of the original membership will have a one-year term, one-third shall have a two-year term, and the remainder shall have a three-year term. The Mayor shall determine which member is to serve which term.

(E) Any vacancy occurring other than by expiration of term shall be filled by appointment of the Mayor with the advice and consent of the City Council, and such appointment shall be for the unexpired term of the member whom he/she is to succeed.

(Ord. 4-1997)

§ 2-6-7-4 DUTIES.

The powers and duties of the Youth Advisory Council shall be as follows:

(A) Advise the Mayor and City Council on City programs geared toward youth, including the need for new or expanded programs.

(B) Facilitate at least two "Job Shadow" days each year to enable other youth to learn more about City programs and possible career fields.

(C) Serve as the Mayor's liaison to other youth-oriented organizations.

(D) Annually develop and implement a public service project.

(E) Promote and assist in the establishment of effective programs for the prevention of delinquency, youth crimes, crimes against youth, and neglect.

(F) Other duties requested by the City.

(Ord. 4-1997)

§ 2-6-7-5 ORGANIZATION.

(A) *Officers.*

(1) The minimum number of officers of the Council shall be not less than two officers (such as the Chairperson and Vice Chairperson), plus such other officers as the Council may deem necessary.

(2) All officers shall be elected by the members for a term of one year, and no officer shall serve more than two consecutive terms in the same office.

(B) *Meetings.*

(1) All meetings of the Council shall be open to the public and, insofar as possible, shall be held at a City-owned facility.

(2) The Council shall meet at least quarterly.

(3) A majority of all the members of the Council shall constitute a quorum for the transaction of business. A motion shall carry upon the affirmative vote of the majority of the members present at any meeting at which a quorum is present.

(C) *Staff support.* City staff support for the Council shall come from the Department of Family and Community Services.

(Ord. 4-1997)

PART 8: WATER PROTECTION ADVISORY BOARD

§ 2-6-8-1 SHORT TITLE.

This ordinance shall be known and may be cited as the “Water Protection Advisory Board Ordinance.”

(Ord. 36-1997; Am. Ord. 39-2006)

§ 2-6-8-2 DEFINITIONS.

For purposes of this ordinance, the following definitions shall apply:

AUTHORITY. The Albuquerque Bernalillo County Water Utility Authority.

AUTHORITY EXECUTIVE DIRECTOR. Executive Director of the Albuquerque Bernalillo County Water Utility Authority or his or her authorized representative.

BOARD. The Water Protection Advisory Board created by this ordinance.

CHIEF ADMINISTRATIVE OFFICER. Chief Administrative Officer of the City of Albuquerque or his or her authorized representative.

CITY. City of Albuquerque, New Mexico.

CITY COUNCIL. Albuquerque City Council.

COUNTY. County of Bernalillo, New Mexico.

COUNTY COMMISSION. Board of County Commissioners of Bernalillo County.

COUNTY MANAGER. County Manager of Bernalillo County or his or her authorized representative.

GROUND WATER PROTECTION POLICY AND ACTION PLAN or “**GPPAP.**” The Albuquerque/ Bernalillo County Ground-Water Protection Policy and Action Plan, adopted by the County in Resolution No. AR 121-93 on November 23, 1993, and the City in Resolution No. R-57, Enactment No. 81-1994, on August 12, 1994.

MAYOR. Mayor of the City of Albuquerque or his or her authorized representative.

POLICY IMPLEMENTATION COMMITTEE. The joint City/Authority/County committee, co-chaired by the County Manager, the Authority Executive Director, and the Chief Administrative Officer or their designees, which is charged with implementing GPPAP or other water quality protection programs at the administrative level and providing oversight and policy direction.

(Ord. 36-1997; Am. Ord. 39-2006)

§ 2-6-8-3 PURPOSE.

The purpose of the Water Protection Advisory Board Ordinance is to establish a combined City, Authority, and County advisory board to:

(A) Study and advise the City, the Authority, and the County on surface and ground water protection concerns, including policies necessary to enhance protection of surface and ground water quality;

(B) Oversee implementation of the Ground Water Protection Policy and Action Plan;

(C) Promote consistency in City, Authority, and County actions to protect surface and ground water quality; and

(D) Advocate effective protection of surface and ground water quality.

(Ord. 36-1997; Am. Ord. 39-2006)

§ 2-6-8-4 BOARD CREATED.

(A) *Creation.* There is hereby created a Ground Water Protection Advisory Board.

(B) *Membership.* The Board shall consist of nine members, three of whom shall be appointed by the Mayor with the advice and consent of the City Council, two of whom shall be appointed by the Authority, and three of whom shall be appointed by the County Commission. One member shall be appointed jointly by the County Commission and the Mayor with the advice and consent of the City Council. Initial membership shall consist of existing Groundwater Protection Advisory Board appointed members.

(C) *Terms.* Members shall be appointed for three year terms. No member shall serve more than two consecutive terms at a time. Members whose terms expire may continue to serve until a successor member is appointed. In such case when a new member is appointed, the term shall relate back to the time of expiration of the previous term. Service for a partial term of greater than two years constitutes a term for the purpose of determining the consecutive number of terms permissible. The terms of the members of the Board shall be staggered so that three members' terms shall expire each calendar year. The jointly-appointed member shall be appointed for a three-year term. Existing Groundwater Protection Advisory Board members shall continue to serve on the Water Protection Advisory Board until their terms expire.

(D) *Vacancies.* Vacant positions occurring as a result of an expired term shall be filled by the entity that appointed the outgoing member. Vacant positions occurring for reasons other than an expired term shall be filled by the entity that appointed the departing member, with the replacement member serving for the remainder of the unexpired term.

(E) *Qualifications.*

(1) Board members shall represent the public interest and have a commitment to surface or ground water protection. Due to the complexity of the issues involved in surface and ground water protection, members preferably should have some technical proficiency in surface or ground water matters. Also, because surface and ground water protection concerns may vary by

geographic location and type of water and wastewater systems used, members should be representative of the diverse geographic range of the City and the County.

(2) City-appointed members shall be residents of the City and County-appointed members shall be residents of the County. The jointly-appointed member shall be a resident of the County. Authority-appointed members shall reside within the Authority service area.

(3) No person employed on a full time basis by either the City or the County shall be appointed to the Board. No elected City or County official, and no member of the immediate family of an elected City or County official, shall be appointed to the Board.

(F) *Removal.* A member of the Board may be removed from office by the appointing entity for any one or more of the following reasons.

(1) The member has been absent from three consecutive meetings, unless the absence was excused by the Chair. For this purpose, being absent is defined as not being in attendance 75% or more of the duration of each officially called meeting.

(2) The member has been absent, whether excused or not, from more than 50% of the meetings during any twelve consecutive months.

(3) The member is incapacitated, neglectful of duty, or commits malfeasance in office, as determined by the appointing entity.

(Ord. 36-1997; Am. Ord. 39-2006)

§ 2-6-8-5 ORGANIZATION; MEETINGS.

(A) *Officers.* Annually, in the first quarter of the calendar year, the Board shall elect a Chair, Vice-Chair, and any other officers which the Board deems appropriate. Officers shall be elected by vote of the majority of the Board members. Officers shall be elected for one-year terms. No officer shall serve in the same position for more than two consecutive terms at a time. Existing Groundwater Protection Advisory Board officers shall continue to serve on the Water Protection Advisory Board until their term expires.

(B) *Meetings.*

(1) The Board shall hold meetings at least once a month, unless a quorum is unavailable despite best efforts to schedule a convenient meeting or for other good reason, to meet workload demands during the initial implementation of GPPAP. Should the work-load diminish sufficiently, as determined by the Board, the Board may reduce its meeting schedule to no less than quarterly. The Board shall meet a minimum of four times a year.

(2) All meetings shall be in compliance with the provisions of the Open Meetings Act.

(C) *Conduct of Business.* Unless the Board adopts other written rules to govern its proceedings, the Board shall conduct business according to *Robert's Rules of Order*, which the Board may modify in writing as it deems appropriate. A quorum of five members shall be necessary to transact business, adopt motions, or conduct voting. Actions may be decided by a majority of the members present.

(D) *Records.* A record shall be kept of all meetings of the Board, including the vote of each member on each action. The records shall be filed with the City and County Clerks and shall be made available for public inspection at reasonable times.

(E) *Conflict of Interest.*

(1) Any member who has a conflict of interest regarding a policy, decision, or determination before the Board or one of its committees or work groups on which the member serves shall, as soon as possible after the conflict of interest becomes apparent, disclose the nature of the conflict to each of the other members voting on the matter. Disclosures shall be recorded. Disclosure of a conflict of interest shall not disqualify a member from participating in any discussion, debate, or vote on the matter unless:

(a) A majority of the remaining members voting on the matter determines that, for reasons of propriety, the member should not participate or vote on the matter; or

(b) The member voluntarily disqualifies himself or herself.

(2) For purposes of this ordinance, a ***CONFLICT OF INTEREST*** means that the member, member's spouse, or member's minor child has an adverse or financial interest in the outcome of any policy, decision, or determination before the Board or one of its committees or work groups on which the member serves.

(Ord. 36-1997; Am. Ord. 39-2006)

§ 2-6-8-6 STAFF.

(A) The Chief Administrative Officer, the Executive Director, and the County Manager shall provide staff and resources, including the services of the Policy Implementation Committee, as necessary and appropriate to assist the Board.

(B) The City, the Authority, and the County may jointly fund a contract for professional, technical, or administrative services to be supplied to the Board or the Policy Implementation Committee as necessary to meet their responsibilities. In the event of a jointly funded contract, each government's ordinances and regulations on approval of contracts for these services shall apply only to the amount of the contract that will be paid by the government, after any reimbursement from the other government, and not to the total contract amount.

(Ord. 36-1997; Am. Ord. 39-2006)

§ 2-6-8-7 DUTIES AND POWERS OF THE BOARD.

(A) There is hereby delegated to the Board the following power and authority:

(1) *Study.* The Board shall study means of protecting and improving ground water quality.

(2) *Advisory Functions.* The Board shall advise the Mayor and the City Council, the Authority, the County Commission, the Environmental Planning Commission and the County Planning Commission, and City, Authority, and County staff on protection of the surface and ground water, including recommended policies on surface and ground water protection measures; ordinances appropriate for effecting such policies, based on GPPAP; the adequacy of surface and ground water protection staffing, budgets and progress; and other appropriate matters.

(3) *Oversight Functions.* The Board shall oversee the implementation of GPPAP; monitor and review City, Authority, and County actions to protect the surface and ground water; foster the continued cooperation of the City, Authority, and County in surface and ground water protection; and promote consistency in City, Authority, and County surface and ground water protection measures.

(4) *Public Education and Advocacy.* The Board shall engage in public education and advocacy for the effective protection of surface and ground water quality by public officials as well as residents of the City, the Authority service area, the County, and their environs.

(5) *Reports.* The Board shall report at least annually to the Authority, County Commission and the Mayor and the City Council on its activities, progress made in implementing GPPAP, and any recommendations for additional policies or ordinances to protect surface and ground water quality. At least every five years, the Board shall undertake a comprehensive review and evaluation of the effectiveness of GPPAP and recommend any necessary changes to it.

(6) *Other Duties, Responsibilities, and Powers.* The Board shall have other duties, responsibilities, and powers as may be jointly delegated to it by the City Council, the Authority, and the County Commission.

(7) *Comprehensive Surface Water Quality Assessment and Implementation Program.* The Board shall work with City, County, and Authority staff in outlining and developing programs for surface water in addition to existing ground water protection programs. The Board shall work with staff in developing a timeline for implementation of the activities including costs, responsibilities and other issues related to surface water protection.

(B) *Committees and Work Groups.* The Board may form committees to assist the Board with its assigned duties, responsibilities, and powers. Committees shall consist of members of the Board selected by the Board. The Board also may form advisory work groups to carry out specific assignments that will assist the Board in performing its duties and responsibilities. The Board may establish the specific assignments and set guidelines and timetables for the work group in performing its work. At least one Board member, selected by the Board, shall serve on

a work group. The Board may invite members of the general public, City, Authority, or County staff, or elected officials to serve on its work groups as it deems appropriate.

(C) *Relationship of the Board to the Policy Implementation Committee.* The Board may take an advisory position on a matter that is different from the advisory position of the Policy Implementation Committee. The Board, however, shall not convey its advice to another governmental body without also conveying the different position of the Policy Implementation Committee on the same matter.

(Ord. 36-1997; Am. Ord. 39-2006)

PART 9: ALBUQUERQUE COMMISSION ON IMMIGRANT AFFAIRS AND SERVICES

§ 2-6-9-1 PURPOSE.

The Albuquerque Commission on Immigrant Affairs and Services (ACIAS) will serve an advocacy role for the immigrant communities living within the City of Albuquerque and will act as a liaison between the City and the immigrant communities. The ACIAS will recognize and inform the City on the contributions of immigrant communities. The ACIAS will study and advise the City as to the needs and problems of immigrant communities, including but not limited to those in the areas of housing, human rights, criminal justice/law enforcement, employment, education and healthcare. The ACIAS will make recommendations for the implementation of R-151, Enactment Number 9-2001 and evaluate its impact on Albuquerque's immigrant communities.

(Ord. 25-2001)

§ 2-6-9-2 MEMBERSHIP.

The ACIAS shall consist of no fewer than nine and no more than thirteen members appointed by the Mayor with the advice and consent of the Council. A simple majority of the ACIAS shall be immigrants. The Mayor will solicit recommendations for members from immigrant communities and from immigrant service and advocacy agencies and organizations.

(Ord. 25-2001)

§ 2-6-9-3 TERMS OF OFFICE.

The term of office of each member shall be three years. However, the initial board will have three members with one-year terms and three members with two-year terms. The remaining members will have three-year terms. The Mayor shall determine which members are to serve which terms.

(Ord. 25-2001)

§ 2-6-9-4 ORGANIZATION.

Matters concerning organization of the ACIAS shall be as set forth in Article [2-6-1-4](#) ROA 1994.

(Ord. 25-2001)

§ 2-6-9-5 RESPONSIBILITIES, POWERS AND DUTIES.

(A) In consultation/collaboration with the Department of Family and Community Services, recommend/propose a concrete plan for the creation and implementation of the City's Immigrant Resource Program.

(B) Analyze immigrant access to and use of City services and programs. Identify obstacles to access and recommend changes to overcome said obstacles. Work with immigrant communities to increase awareness of and access to City programs and services.

(C) Recommend objectives for a legislative agenda that encourages Congress to enact just and humane immigration reforms that provide immigrants and their families with rights in this country that are commensurate with human dignity and their status as taxpayers and contributing members of our community, and that the State of New Mexico Legislature revise its laws and policies for health care, education and driver's licenses such that immigrants and their families will have fair access to those services and privileges.

(D) Evaluate policies and practices of City departments for compliance with R-151, Enactment Number 9-2001 and recommend specific changes if needed.

(E) Recognize, document and disseminate contributions made by Albuquerque's immigrant communities.

(Ord. 25-2001)

§ 2-6-9-6 ASSISTANCE AND STAFF SUPPORT.

Upon request, the Mayor shall provide assistance and staff support as is feasible and within existing budget limitations.

(Ord. 25-2001)

PART 10: NEW MEXICO VETERANS MEMORIAL REVIEW COMMITTEE

§ 2-6-10-1 PURPOSE.

Establish policies for the creation and installation of Veterans' Memorials on City of Albuquerque property for wars and military actions and mementos specific to individuals, groups or events and creating the New Mexico Veterans Memorial Review Committee.

(Ord. 63-2001)

§ 2-6-10-2 DEFINITIONS.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

MEMENTO. A commemorative device, object and/or descriptive plaque that honors a New Mexico Veteran, group or event and his/her/their military experience.

MEMORIAL. A work of art, a memorial wall, a sculpture or statue or other construction which honors veterans or military action by the United States Government and includes an interpretative plaque.

NEW MEXICO VETERANS MEMORIAL PARK. The Veterans Memorial Park which identifies and honors the shared experiences of all New Mexico Veterans in all U.S. Military actions and which has facilities needed for private and public ceremonies and is the site for Memorials and Mementos related to New Mexico veterans. The New Mexico Veterans Memorial is a "park" within Phil Chacon Park and is located at 1100 Louisiana Blvd. SE.

NEW MEXICO VETERANS MEMORIAL GARDEN. The area of the Memorial Grounds that includes seven (7) specific venues designed to evoke memories of experiences common to all veterans.

NEW MEXICO VETERANS MEMORIAL REVIEW COMMITTEE. A three-member public committee representing appropriate City boards and agencies and appropriate veterans organizations which meets for purposes including review and approval of requests related to veterans memorials on the grounds of the N.M. Veterans Memorial Park.

VETERANS AND MILITARY AFFAIRS ADVISORY BOARD. Advisory Board to the Mayor for the identification of problems and needs faced by veterans and their dependents residing in the city of Albuquerque; the Board shall assist the Mayor in developing and implementing solutions where possible, that may alleviate or remedy these problems and needs.

(Ord. 63-2001)

§ 2-6-10-3 FINDINGS.

The City has considered relevant information including the input and participation of various groups including veterans groups, civic groups and military units in Albuquerque for the ongoing development and construction of the New Mexico Veterans Memorial based on the following criteria:

- (A) Represents all veterans regardless of when they served, whether in peacetime or war;
- (B) Represents all branches of military service, past, present and future;
- (C) Honors men and women who have served in the military;

(D) Respects the multi-cultural backgrounds of all New Mexico Veterans;

(E) Includes or will include a range of facilities for public and private functions as well as for personal reflection; and

(F) Provides opportunities for the commemoration of both shared and personal military experiences through the creation and installation of complementary Memorials and Mementos.

(Ord. 63-2001)

§ 2-6-10-4 THE NEW MEXICO VETERANS MEMORIAL REVIEW COMMITTEE CREATED.

A New Mexico Veterans Memorial Review Committee is hereby created.

(A) *Membership.* The Committee shall be composed of three (3) members as designated by the group they represent: United Veterans' Council of Greater Albuquerque, the Mayor's Veterans and Military Affairs Advisory Board and the Albuquerque Arts Board. Additionally, ex-officio members shall include representatives of the Parks and Recreation Department and the Capital Implementation Program.

(B) *Selection of Committee Members.* The United Veterans' Council of Greater Albuquerque, the Mayor's Veterans and Military Affairs Advisory Board and the Albuquerque Arts Board will be sent a request by the City's Capital Implementation Program staff to identify a member to serve on the Committee, beginning with calendar year 2002.

(C) *Terms of Service.* The Committee members will begin in calendar year 2002 with the United Veterans Council representative serving three years, the Albuquerque Arts Board representative serving two years and the Mayor's Veterans and Military Affairs Advisory Board representative serving one year. Thereafter, each representative appointed will serve one three-year term.

(D) *Duties and Powers of the Committee.* The Review Committee shall develop criteria with which to evaluate complementary Memorial and Memento proposals including but not limited to who may submit requests for a Memorial or Memento and guidelines relating to content, size, design, location, maintenance plans and funding.

(E) *Chairperson.* The Chairperson of the Committee shall be selected annually by a vote of the Committee.

(F) *Staffing.* The Capital Implementation Program shall provide staff support to the Committee.

(Ord. 63-2001)

§ 2-6-10-5 AUTHORIZATION OF OTHER PERMANENT MEMORIALS AND POLICIES FOR THE CREATION AND INSTALLATION OF MEMORIALS AT THE NEW MEXICO VETERANS MEMORIAL.

(A) *Future Veterans Memorials.* Memorials funded in whole or in part by the City of Albuquerque to honor veterans of specific wars, branches of service, etc. will only be planned for and installed on the grounds of the New Mexico Veterans Memorial outside of the Garden, providing that the design, installation and maintenance plans are approved by the Review Committee and that they meet the criteria described herein together with other such criteria that may be developed by the Review Committee.

(B) *Military Hardware.* No military hardware or equipment may be permanently displayed out-of-doors on the New Mexico Veterans Memorial grounds. Generally, memorials and mementos will be distributed throughout the New Mexico Veterans Memorial grounds to emphasize the common experiences of all veterans.

(C) *Identifying Plaques.* Each approved Memorial must include a plaque that describes the Memorial, its designer or creator, source of funding and the year dedicated. The Review Committee will provide the format for the plaque, including its design and will stipulate media in which it will be fabricated. The sponsoring group or unit must pay for the cost of fabricating and installing the plaque.

(D) *Relocation of existing memorials and artwork.* Veterans Memorials, which are located in the community at sites other than at the New Mexico Veterans Memorial, are eligible to be moved to the New Mexico Veterans Memorial at the request of stakeholders, but must be approved by the Review Committee.

(Ord. 63-2001)

ARTICLE 7: CITY DEPARTMENTS AND OFFICIALS

Section

Part 1: Administration Department

- 2-7-1-1 Short title
- 2-7-1-2 Creation of administration department; director
- 2-7-1-3 Authority and duties of the director of administration
- 2-7-2-4 City Council performance review of the City Attorney
- 2-7-2-5 Contracting with attorneys to provide legal services

Part 2: Legal Department; City Attorney

- 2-7-2-1 Creation of the legal department; city attorney
- 2-7-2-2 Authority and duties of the city attorney
- 2-7-2-3 Appointment of the city attorney

Part 3: Department of Finance and Management

- 2-7-3-1 Department of finance and management
- 2-7-3-2 Financial responsibility

Part 4: Department of Human Services

- 2-7-4-1 Creation of department
- 2-7-4-2 Duties and responsibilities

Part 5: Department of Youth

- 2-7-5-1 Creation of department
- 2-7-5-2 Findings
- 2-7-5-3 Organization

Part 6: Chief Records Custodian

- [2-7-6-1](#) Intent
- [2-7-6-2](#) Findings
- [2-7-6-3](#) Chief records custodian
- [2-7-6-4](#) Departmental records custodian
- [2-7-6-5](#) Process
- [2-7-6-6](#) Archives

Cross-reference:

[*Office of Anti-Graffiti Coordination, see § 11-7-4*](#)

PART 1: ADMINISTRATION DEPARTMENT

§ 2-7-1-1 SHORT TITLE.

Sections 2-7-1-1 et seq. may be cited as the "Administration Code."

('74 Code, § 1-8-1) (Ord. 64-1974)

§ 2-7-1-2 CREATION OF ADMINISTRATION DEPARTMENT; DIRECTOR.

There is created as a department of city government an Administration Department. The executive and administrative head of the Administration Department shall be the Director of Administration who shall be appointed by the Mayor. The Director shall hold office at the pleasure of the Mayor and shall be qualified by experience and training in governmental administrative and financial affairs.

('74 Code, § 1-8-2) (Ord. 64-1974)

§ 2-7-1-3 AUTHORITY AND DUTIES OF THE DIRECTOR OF ADMINISTRATION.

The Director of Administration shall be ultimately responsible to the Mayor for the performance of his duties and in exercising his authority, but he shall be subject to the supervision of the Chief Administrative Officer in the daily operations of the Department. The Director has all those duties imposed upon him under the Administration Code, and when any provision of the code imposes a duty upon the Administration Department, the Director is responsible for fulfilling that duty. The Director has all authority necessary for carrying out his duties and, without limiting that authority, has express authority to:

(A) Organize the Administration Department into those subordinate units that he deems necessary to provide a capability for efficiently fulfilling the Department's responsibilities and functions;

(B) Administer the Administration Department and supervise and direct its employees;

(C) Delegate appropriate functions and authorities to subordinates; and

(D) Adopt and promulgate rules, regulations and orders necessary to implement any authority delegated to him or duty imposed upon him under the Administration Code.

('74 Code, § 1-8-3) (Ord. 64-1974)

PART 2: LEGAL DEPARTMENT; CITY ATTORNEY

§ 2-7-2-1 CREATION OF THE LEGAL DEPARTMENT; CITY ATTORNEY.

There is created a department of the city, the Legal Department. The executive and administrative head of the Legal Department shall be the City Attorney.

('74 Code, § 1-20-1) (Ord. 64-1987)

§ 2-7-2-2 AUTHORITY AND DUTIES OF THE CITY ATTORNEY.

The City Attorney, both personally and through his or her assistant city attorneys, shall represent the city in the courts. He or she shall also advise the Mayor and the Council as to legal matters.

('74 Code, § 1-20-2) (Ord. 64-1987)

§ 2-7-2-3 APPOINTMENT OF THE CITY ATTORNEY.

The City Attorney shall be appointed by the Mayor with the advice and consent of the Council.

('74 Code, § 1-20-3) (Ord. 64-1987)

§ 2-7-2-4 CITY COUNCIL PERFORMANCE REVIEW OF THE CITY ATTORNEY.

The City Council shall conduct a performance evaluation of the City Attorney within 90 days following every 18 month period of consecutive service as City Attorney. The 18 month period shall begin after the Council's approval, the City Attorney's appointment or after the prior performance evaluation, whichever is more recent. The Council shall develop written evaluation criteria for this purpose. The City Council shall present its findings in a public written report to the Mayor and Chief Administrative Officer.

(Ord. 13-1994)

§ 2-7-2-5 CONTRACTING WITH ATTORNEYS TO PROVIDE LEGAL SERVICES.

(A) It is the policy of the city to use attorneys who are city employees for litigation unless there are special reasons for using contract attorneys. When the City Attorney weighs whether outside legal counsel should be retained to handle litigation, the City Attorney shall elect to hire or propose such outside counsel only when:

(1) There is a conflict of interest within the Legal Department that ethically requires outside counsel to be used;

(2) The city has no staff attorney with both the expertise and the time available to handle the needed work; or

(3) When the city has an insurance policy in which the insurer reserves the right to select defense counsel.

(B) Contract attorneys paid by the city shall report to an overseeing attorney who will evaluate and advise on the appropriateness of the litigation strategy of the contract litigator and will also review and evaluate the billing levels of the contract litigator.

(1) The overseeing attorney shall normally be the City Attorney or a city staff attorney assigned by the City Attorney; the overseeing attorney shall not be a person overseeing the legal case preparation for another party who may have separate interests from those of the party represented by the contract attorney.

(2) If the estimated cost of securing the services of contract attorneys for a case, to be established at the initiation of the legal work, exceeds \$100,000, the City Attorney shall request the Director of the Office of Internal Audit and Investigations to retain a different contract attorney to review the work of the contract litigator retained by the city. The contract attorney so retained shall advise and consult with the overseeing attorney concerning his or her conclusions.

(3) If the City Attorney believes that he or she may be named personally as a defendant in the suit in question or a related suit, or if he or she believes that the Mayor, the Chief Administrative Officer, or a Deputy or Assistant Chief Administrative Officer may be similarly named in the litigation and they are personally implicated based on the specific facts of the lawsuit, the City Attorney shall request the Director of the Office of Internal Audit and Investigations to retain a different contract attorney to review the work of the contract litigator retained by the city. The contract attorney so retained shall advise and consult with the overseeing attorney concerning his or her conclusions.

(4) If the overseeing attorney believes the contract litigator is not acting in the best interests of the city but when so advised the contract litigator elects not to alter his or her approach, the overseeing attorney shall report this to the person who appointed him or her. Such report by the overseeing attorney shall be at the conclusion of the litigation unless he/she feels the problem is one that must be immediately addressed by the city. Following receipt of such a report, the City Attorney shall share the concern with the Mayor and the President of the City Council; the Director of the Office of Internal Audit and Investigations, after receipt of such report, shall share the report with the Accountability in Government Committee. For cases in

which the city is the client, members of the City Council and authorized members of the City Council staff shall have unrestricted access to the overseeing attorney and the case record during the course of the legal work and after its conclusion.

(5) In cases for which it has been estimated that the cost of securing the services of contract attorneys exceeds \$100,000, the overseeing attorney shall forward for review all legal billings to the Risk Management Division of the Department of Finance and Management. Staff of the Risk Management Division shall work with the overseeing attorney to evaluate the reasonableness of billings and to control contract attorney costs.

(6) The above provisions of division (B) do not apply to defense of Workers' Compensation cases; in those cases, the City Risk Manager shall provide oversight of contract litigators' litigation strategy and billing levels.

(Ord. 14-1994; Am. Ord. 1-2005)

PART 3: DEPARTMENT OF FINANCE AND MANAGEMENT

§ 2-7-3-1 DEPARTMENT OF FINANCE AND MANAGEMENT.

Wherever the term **DEPARTMENT OF ADMINISTRATION** appears in this code, it shall also mean "Department of Finance and Management," and wherever the term **DIRECTOR OF ADMINISTRATION** appears in this code it shall also mean "Director of Finance and Management."

('74 Code, § 1-8-14) (Ord. 19-1975; Am. Ord. 3-1992)

Cross-reference:

City budget, see §§ 2-11-1 et seq.

[Department of Administration; Director established, see § 2-7-1-1 et seq.](#)

§ 2-7-3-2 FINANCIAL RESPONSIBILITY.

Under the direction and authority of the Mayor and the Chief Administrative Officer, the Department of Finance and Management shall be responsible for administering and managing the financial affairs of the city.

('74 Code, § 1-8-15) (Ord. 19-1975; Am. Ord. 3-1992)

PART 4: DEPARTMENT OF HUMAN SERVICES

§ 2-7-4-1 CREATION.

There is hereby created a Department of Human Services. The Mayor shall organize the Department of Human Services and shall include within the Department any city organization he deems proper. The Director of the Department of Human Services shall be appointed by the Mayor.

('74 Code, § 1-18-1) (Ord. 75-1978)

§ 2-7-4-2 DUTIES AND RESPONSIBILITIES.

The Director, subject to the authority of the Mayor and the Chief Administrative Officer, shall administer the Department of Human Services. The Department shall coordinate the human services programs of the city with all city departments and organizations, and the Department shall coordinate the city's human services programs with all non-city government organizations. The Department shall require any organization applying for funds which have been appropriated by the city to submit to the Department of Human Services a plan of action detailing the goals and objectives of the program for which funding is desired, and the means of implementing those plans to attain the stated goals and objectives of the program. The Department shall be responsible for preparing requests for proposals for delivery of services from various outside agencies; and for negotiating contracts with outside agencies selected to deliver human services. The Department shall monitor the performance of the contracts with these outside agencies and prepare periodic evaluations of the programs. The evaluations shall include an analysis of performance indicators to determine the effectiveness of a program in attaining the desired goals and objectives. In addition, the Department shall develop a long-range plan for the delivery of human services and prepare an annual plan for the city's role in human services programs. This annual plan should specify the recommended course of action for the city in coordinating and providing human services to citizens within the geographic confines of the city.

('74 Code, § 1-18-2) (Ord. 75-1978)

PART 5: DEPARTMENT OF YOUTH

§ 2-7-5-1 CREATION OF DEPARTMENT.

There is established a department of the city, the Department of Youth. The Mayor shall appoint a director of the Department of Youth.

(Ord. 64-2005)

§ 2-7-5-2 FINDINGS.

The Council finds:

(A) The New Mexico Department of Health found that youth who feel connected to family and to school, and who have a positive sense of themselves, have a lower rate of serious risk-taking behaviors than teens without these advantages;

(B) A focus on criminalizing youth behavior has proven to be ineffective in creating positive outcomes for youth;

(C) Existing youth programs would benefit from the coordination and collaboration created by a Department of Youth; and

(D) A new Department of Youth would elevate the critical importance of our city's young people and their needs, services and programs.

(Ord. 64-2005)

§ 2-7-5-3 ORGANIZATION.

(A) The Mayor shall organize the Department of Youth which shall include the youth programs and activities currently offered by the Parks and Recreation Department and the Department of Family and Community Services and any other city programs and activities the Mayor deems appropriate.

(B) The Department of Youth shall also include the City Sports, Arts and Music Initiative (SAMI) which shall be responsible for the following:

(1) Promoting youth events, including alcohol-free, all-age events, and contests in the areas of sports, arts and music;

(2) Organizing and promoting positive activities for youth such as poetry slams, 3-on-3 basketball tournaments, skateboarding tournaments, music and dance contests, street art contests, and Junior Olympics; and

(3) Organizing and promoting special youth seminars that offer opportunities for youth to work with local and visiting known sports figures, artists and musicians.

(Ord. 64-2005)

PART 6: CHIEF RECORDS CUSTODIAN

§ 2-7-6-1 INTENT.

The intent of §§ 2-7-6-1 et seq. is to implement the State of New Mexico Inspection of Public Records Act set forth at Section 14-2-1 et seq. NMSA 1978. Recognizing that a representative government is dependent upon an informed electorate, the intent of the Act is to ensure that all persons are provided the greatest possible information regarding the affairs of government and the official acts of public officers and employees. Providing persons with such information is an essential function of a representative government and an integral part of the routine duties of public officers and employees.

(Ord. 44-1994; Am. Ord. 20-2000)

§ 2-7-6-2 FINDINGS.

The New Mexico Inspection of Public Records Act, Section 14-2-1 et seq., NMSA 1978, provides that some classes of records are not subject to public inspection "as otherwise provided by law." Federal law expresses a policy in favor of protecting the privacy of individuals in their social security numbers. 5 U.S.C. § 522a(b). City department heads, other employees and

officials have a legitimate and reasonable expectation of privacy in their social security numbers. The legitimate and reasonable expectation of privacy that City employees have in their social security numbers, outweighs the interest in the public in the disclosure of such information. City employees other than department heads and officials have a legitimate expectation of privacy in their home addresses and home telephone numbers in order to protect such information from use for illegal purposes. The legitimate and reasonable expectation of privacy that City employees have in their social security numbers, home addresses and home telephone numbers outweighs the interest in the public in the disclosure of such information. In light of the Congressional policy favoring nondisclosure of social security numbers and the constitutional right to privacy in one's home address and home telephone numbers, the City is justified in enacting legislation codifying such protections for its public employees and officials.

(Ord. 20-2000)

§ 2-7-6-3 CHIEF RECORDS CUSTODIAN.

There is hereby created the position of Chief Records Custodian for the city, who shall receive and respond to requests to inspect public records, provide proper and reasonable opportunities to inspect public records and provide reasonable facilities to make or furnish copies of the public records during usual business hours.

(Ord. 44-1994; Am. Ord. 20-2000)

§ 2-7-6-4 DEPARTMENTAL RECORDS CUSTODIAN.

Each department of the city shall designate a person to be the Records Custodian for said department who shall cooperate and coordinate with the Chief Records Custodian to respond to requests to inspect public records.

(Ord. 44-1994; Am. Ord. 20-2000)

§ 2-7-6-5 PROCESS.

The Chief Records Custodian shall establish a procedure for responding to requests to inspect public records which complies with the requirements of state law as set forth in the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978 as currently enacted or hereinafter amended. The City shall also establish through the office of the Chief Records Custodian, telephone and direct access for purposes of establishing prompt contact between City employees and interested individuals including members of the media.

The social security numbers, home addresses and home telephone numbers of City employees are not public records within the meaning of the New Mexico Inspection of Public Records Act, and shall not be disclosed to any person, except with the express, written consent of the employee or official. The social security numbers of City department heads and officials are not public record and shall not be disclosed to any person except with the express written consent of that person. Home addresses and home telephone numbers of City officials and department heads are public record.

(Ord. 44-1994; Am. Ord. 20-2000)

§ 2-7-6-6 ARCHIVES.

There shall be established an archiving system which shall be accessible to the public through requests to the Chief Records Custodian who shall be responsible for the office of the archives.

(Ord. 44-1994; Am. Ord. 20-2000)

ARTICLE 8: LEGAL SERVICES; LITIGATION

Section

Part 1: Settlement or Compromise of Litigation

- 2-8-1-1 Statement of purpose
- 2-8-1-2 Settlement authority
- 2-8-1-3 Procedure for settlement
- 2-8-1-4 Reports

Part 2: Risk Management

- 2-8-2-1 Authority
- 2-8-2-2 Short title
- 2-8-2-3 Council declaration
- 2-8-2-4 Incorporating provisions of the New Mexico Tort Claims Act
- 2-8-2-5 Risk management manual
- 2-8-2-6 Risk management claims review board
- 2-8-2-7 Risks to be self-insured or insured
- 2-8-2-8 Risk management fund
- 2-8-2-9 Tort liability program claims

[2-8-2-10](#) Other risk management programs expenditures

[2-8-2-11](#) Confidentiality of records

[2-8-2-99](#) Penalty

PART 1: SETTLEMENT OR COMPROMISE OF LITIGATION

§ 2-8-1-1 STATEMENT OF PURPOSE.

The City Council recognizes that, while the City Attorney must have maximum freedom in dealing with ordinary cases involving the city, the City Council must keep informed about the settlement of cases of a serious nature, whether for financial or policy reasons.

('74 Code, § 1-16-1) (Ord. 66-1977)

§ 2-8-1-2 SETTLEMENT AUTHORITY.

The city shall not settle or dismiss any suit on behalf of or against the city which involves an amount of \$25,000 or more, or any suit alleging the invalidity or unconstitutionality of any city ordinance where the effect of such settlement would be to compromise the terms of such ordinance, except in accordance with the procedures set out in § 2-8-1-3 herein. For the purpose of this section, *SETTLEMENT* amount shall mean in condemnation cases the amount which exceeds the city's highest appraisal.

('74 Code, § 1-16-2) (Ord. 66-1977; Am. Ord. 45-1987)

§ 2-8-1-3 PROCEDURE FOR SETTLEMENT.

(A) Where settlement of a case involves a decision made by the Council in an appeal, whether the matter is specified in § [2-8-1-2](#) or not, settlement of the case shall require a majority vote of the Council.

(B) Where settlement of a case specified in § [2-8-1-2](#) involves a plan adopted by the Council for urban development and conservation as specified in §§ [14-13-2-1](#) et seq., Planning, and the Council has adopted that plan, settlement of the case shall require a majority vote of the Council.

(C) Where settlement of a case specified in § [2-8-1-2](#) involves making a special agreement to delay or not enforce Council-adopted zoning or subdivision regulations, settlement of the case shall require a majority vote of the Council.

(D) In cases of proposed settlement of a case specified in § [2-8-1-2](#), but not specified above in this section, if the matter will not come before the Risk Management Claims Review Board or if the policy of an ordinance will be substantially affected by the proposed settlement, the City Attorney shall confer with the Director of the Council Services Department or his or her authorized representative prior to the finalization of any such settlement. Additionally, the City

Attorney shall have prepared a report on every case where settlement for \$25,000 or more has occurred. Such report, including the designation of each case by name and number, settlement and the reason why the settlement was entered into, shall be made public and shall be transmitted by executive communication to the City Council within 30 days after the time for appeal of a judgement or finalization of a settlement has run.

('74 Code, § 1-16-3) (Ord. 66-1977; Am. Ord. 45-1987; Am. Ord. 8-1993)

§ 2-8-1-4 REPORTS.

The City Attorney shall, in addition to the obligations imposed in § 2-8-1-3 above, submit in writing to the Council, a quarterly report listing the amount of all settlements and judgments where the amount of the settlement or judgment exceeds \$10,000, designating each case by name and number, if applicable, and describing the nature of the case.

('74 Code, § 1-16-4) (Ord. 66-1977; Am. Ord. 45-1987)

PART 2: RISK MANAGEMENT

§ 2-8-2-1 AUTHORITY.

The Council, pursuant to Article X, Section 6 of the Constitution of New Mexico, in accordance with the New Mexico Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978, hereby enacts §§ [2-8-2-1](#) et seq. to create a municipal public liability fund and for the purpose of providing maximum local self-government.

('74 Code, § 1-15-1) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-2 SHORT TITLE.

Sections [2-8-2-1](#) et seq. shall be referred to as the "City Risk Management Ordinance."

('74 Code, § 1-15-2) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-3 COUNCIL DECLARATION.

(A) The Council intends by §§ [2-8-2-1](#) et seq. to provide for the establishment of a Risk Management Function, a municipal public liability fund which shall be known as the Risk Management Fund, and to provide for insurance or self-insurance in accordance with the Tort Claims Act, Sections 41-4-1 et seq. NMSA 1978.

(B) Sections [2-8-2-1](#) et seq. shall be interpreted in a manner consistent with the express requirements of the New Mexico Tort Claims Act applicable to home rule municipalities electing to insure or self-insure through a municipal liability fund.

(C) Nothing in §§ [2-8-2-1](#) et seq. shall be construed as limiting the powers of the city as a home rule municipality which has adopted a charter pursuant to Article X, Section 6 of the Constitution of New Mexico.

(D) Nothing in §§ [2-8-2-1](#) et seq. shall be construed as a waiver of any sovereign governmental immunity.

('74 Code, § 1-15-3) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-4 INCORPORATING PROVISIONS OF THE NEW MEXICO TORT CLAIMS ACT.

The city hereby adopts and incorporates herein the New Mexico Tort Claims Act as that Act may be amended or revised from time to time.

('74 Code, § 1-15-4) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-5 RISK MANAGEMENT MANUAL.

The Chief Administrative Officer shall cause a Risk Management Manual to be prepared and distributed to all departments and division heads.

(A) The *Risk Management Manual* shall set forth city policies and procedures pertaining to loss prevention, accident reporting and the handling and settling of claims against the city, its officers and employees.

(B) The *Risk Management Manual* shall set forth procedures governing the Risk Management Claims Review Board.

('74 Code, § 1-15-5) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-6 RISK MANAGEMENT CLAIMS REVIEW BOARD.

(A) There is created a Risk Management Claims Review Board which shall not be considered as a public board. The Board shall consist of:

- (1) The Chief Administrative Officer of the city or designee of the Chief Administrative Officer;
- (2) The City Attorney or a designee of the City Attorney;
- (3) The Director of Finance and Management or designee of the Director of Finance and Management;
- (4) The Director of the Personnel Services Department or a designee of the Director of the Personnel Services Department;
- (5) A department head or designee, appointed by the Chief Administrative Officer;

(6) The Risk Management Director, Deputy Director or the Claims Manager who shall be a non-voting member; and

(7) A member of the staff of the City Council designated by the Director of Council Services who shall be a non-voting member.

(B) Three voting members of the Risk Management Claims Review Board shall constitute a quorum.

(C) The Risk Management Claims Review Board shall review and approve or disapprove the handling, payment and disposition of claims in accordance with the *Risk Management Manual* approved by the Chief Administrative Officer of the city. A decision of the Board shall not be the subject of a grievance as defined in [Chapter 3, Article 1](#), Merit System; Personnel Policy

('74 Code, § 1-15-6) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-7 RISKS TO BE SELF-INSURED OR INSURED.

The city shall provide for self-insurance or insurance for the following risks:

(A) All risks for which immunity has been waived under the provisions of the Tort Claims Act;

(B) All risks arising under the laws of jurisdictions other than New Mexico, including but not limited to other states, territories and possessions, and the United States of America; and

(C) For all other risks for which the Chief Administrative Officer deems it reasonable to provide for insurance or reserves. These risks shall be set forth in the *Risk Management Manual* and approved by the Chief Administrative Officer.

('74 Code, § 1-15-7) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-8 RISK MANAGEMENT FUND.

(A) The city hereby elects to create and maintain a municipal public liability fund as required by Section 41-4-25B NMSA 1978 of the New Mexico Tort Claims Act which shall be called the Risk Management Fund.

(B) The Risk Management Fund shall be held in trust, deposited in a segregated account and invested in accordance with law.

(C) Any money deposited in the Risk Management Fund may be expended to purchase liability insurance; to pay costs and expenses incurred in carrying out the provisions of this section; to defend, save harmless and indemnify any officer or employee of the municipality for any liability covered by the Tort Claims Act; and to create a retention fund adequate to cover all uninsured tort liability or other liability covered by the provisions of the Tort Liability Act.

Except for insurance purchased through the State Risk Manager, insurance shall be purchased through an Agent of Record selected pursuant to [Chapter 5, Article 5](#), Public Purchases.

(D) Each year the Council shall appropriate to the Risk Management Fund such amounts as are necessary to purchase insurance or to provide adequate reserves for self-insured risks for which immunity has been waived by the New Mexico Tort Claims Act and liabilities of the city pursuant to the laws of New Mexico, this code and any applicable ordinances of the city, and the laws of the United States and other jurisdictions.

('74 Code, § 1-15-8) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-9 TORT LIABILITY PROGRAM CLAIMS.

(A) There is hereby created a Tort Liability Claims Program within the Risk Management Fund.

(B) Claims against the Tort Liability Claims Program shall be made in accordance with the Tort Claims Act.

(C) All claims made pursuant to the New Mexico Tort Claims Act shall comply with the requirements of the Act regarding notice or written notice of the occurrence giving rise to claim, and that Act's statute of limitations;

(D) If the Director for the Risk Management Function has reason to believe that the Risk Management Fund would be exhausted by payment of all claims allowed during a particular fiscal year, the amounts paid to each claimant and parties obtaining judgments shall be prorated, with each party receiving an amount equal to the percentage their own payment bears to the total of claims or judgments outstanding and payable from the fund. Any amounts due and unpaid as a result of such proration shall be paid in the following fiscal year.

('74 Code, § 1-15-9) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-10 OTHER RISK MANAGEMENT PROGRAMS EXPENDITURES.

Each year the Council shall appropriate such funds as may be necessary to other Risk Management Programs. Money appropriated to other Risk Management Programs may be expended:

(A) To settle, defend, and pay claims and judgments for on-the-job injuries to city employees as provided in the New Mexico Workmen's Compensation Act. All claims made pursuant to the New Mexico Workmen's Compensation Act shall comply with the requirements of that act with respect to notice or written notice of the occurrence giving rise to the claim and that Act's statute of limitations;

(B) To insure or self-insure all risks of loss of the city not insured or self-insured by the Tort Liability Claims Program. Insurance shall be purchased through one or more Agents of Record selected pursuant to [Chapter 5, Article 5](#), Public Purchases;

(C) To pay any claims, judgments, costs and expenses incurred in carrying out the provisions of §§ [2-8-2-1](#) et seq. and the provisions of the *Risk Management Manual*;

(D) To create a retention or reserve fund and/or provide excess insurance coverage for unmatured risks and claims.

('74 Code, § 1-15-10) (Ord. 95-1983; Am. Ord. 66-1986)

§ 2-8-2-11 CONFIDENTIALITY OF RECORDS.

(A) Until the disposition of a claim or lawsuit becomes final, all claim and litigation records shall be confidential and shall not be subject to any right of inspection by any person not a city officer or employee acting within the scope of their official duties.

(B) When the disposition of a claim or lawsuit becomes final, claim and litigation records shall then be subject to public inspection, except for those records, or portions thereof, that are exempt from disclosure under the state Inspection of Public Records Act. For the purpose of this section, *FINAL* shall mean when the settlement agreement has been signed by all the parties when the final decree has been entered by the court, or, if the former events are not applicable, when the city closes the case.

(C) Settlement agreements, final judgments and releases executed pursuant to the final disposition of a claim or lawsuit shall not be confidential. No settlement agreement entered into in order to settle claims or litigation against the city may contain provisions providing for the confidentiality of the settlement documents or provisions prohibiting disclosure of the reasons for entering into the settlement.

(D) Records protected pursuant to division (A) or (B) of this section shall be made available as necessary for purposes of audit or defense. Any person performing such audit or providing such defense shall keep such records confidential, except as required otherwise by law.

('74 Code, § 1-15-11A,B) (Ord. 95-1983; Am. Ord. 66-1986; Am. Ord. 53-1995) [Penalty, see § 2-8-2-99](#)

§ 2-8-2-99 PENALTY.

Any person who reveals records protected pursuant to § 2-8-2-11(A) to another person in violation of this section is guilty of misdemeanor and shall, upon conviction, be fined not more than \$500. The city shall not employ any person so convicted for a period of five years after the date of conviction.

('74 Code, § 1-15-11C) (Ord. 95-1983; Am. Ord. 66-1986)

ARTICLE 9: CIVIL EMERGENCIES

Section

Part 1: Civil Emergency Powers

- 2-9-1-1 Definitions
- 2-9-1-2 Bombs or missiles prohibited
- 2-9-1-3 Emergency powers
- 2-9-1-4 Publication of orders
- 2-9-1-5 Extension of emergency proclamation
- 2-9-1-6 Failure to obey

Part 2: Office of Emergency Preparedness

- 2-9-2-1 Office of emergency preparedness
- 2-9-2-2 Coordinator of emergency preparedness

Part 3: Civil Defense

- 2-9-3-1 Short title
- 2-9-3-2 Definitions
- 2-9-3-3 Designation, status, qualifications and term of emergency interim successors
- 2-9-3-4 Assumption of powers and duties of officer by emergency interim successor
- 2-9-3-5 Recording and publication
- 2-9-3-6 Formalities of taking office
- 2-9-3-7 Quorum and vote requirements
- 2-9-3-8 Temporary disaster location for the city council

PART 1: CIVIL EMERGENCY POWERS

§ 2-9-1-1 DEFINITIONS.

For the purpose of §§ [2-9-1-1](#) et seq. the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOMB. Any can, bottle, box or other container, having therein a chemical agent or a combination of chemical agents or other substances with a means installed to activate such substances which when activated will cause fire or explosion.

CIVIL EMERGENCY.

(1) A riot. Any use of force or violence, or any threat to use force or violence, if accompanied by the immediate power of execution, which threatens to result in acts described in division (4) below by three or more persons acting together, and without authority of law, which cannot be controlled or stopped under existing conditions and authority, is a riot.

(2) Unlawful assembly consisting of three or more persons assembling together with intent to do any unlawful act described in division (4) below with force or violence against the person or property of another, and who make any overt act to carry out such unlawful purpose, or who do a lawful act in an unlawful, violent or tumultuous manner, which cannot be controlled or stopped under existing conditions or authority.

(3) A natural disaster or a manmade calamity, including but not limited to flood, conflagration, cyclone, tornado, earthquake or explosion occurring within or affecting property within the city limits of the city which endangers life and property to such extent that extraordinary measures must be taken to protect the public health, safety and welfare.

(4) Unlawful activities, such as looting, arson, fire bombing, sniping, interference with emergency vehicles, widespread criminal damage to property, which in the opinion of the Mayor based upon consultation with the Chief of Police cannot be controlled nor stopped under existing conditions and authority without unduly further endangering life or property.

CURFEW. That period of time as declared by the Mayor during which no person or persons shall be upon the public streets, sidewalks, grounds or semi-public property either on foot or in vehicles of any type within the city, except, however, that persons authorized by the Mayor by administrative order shall not be subject to the curfew.

MAYOR. The Mayor of the city or his designated representative.

MOLOTOV COCKTAIL. A bottle or other type container, containing gasoline or any other inflammable matter to which has been inserted or attached a fuse type wick or any similar contrivance.

('74 Code, § 1-3-1) (Ord. 58-1968)

§ 2-9-1-2 BOMBS OR MISSILES PROHIBITED.

No person shall make, carry, possess or use any type of Molotov Cocktail, gasoline or any other type of bomb within the corporate limits of the city.

('74 Code, § 1-3-2) (Ord. 58-1968) [Penalty, see § 1-1-99](#)

§ 2-9-1-3 EMERGENCY POWERS.

Whenever the Mayor shall after consultation with the Chief of Police find that a civil emergency exists as defined herein and that invocation of the extraordinary powers conferred herein is necessary to ensure or to restore the public peace, he shall forthwith proclaim in writing the existence of such emergency. Upon such determination the Mayor is hereby empowered to invoke any or all of the following provisions:

(A) To declare hours of curfew upon all or any portion of the city thereby requiring all persons in such designated curfew areas to forthwith remove themselves from the public streets, alleys, parks or other public or semi-public places. The curfew shall be declared by proclamation which shall be delivered to the Chief of Police, who shall see that copies thereof are delivered to all news media within the city and who shall also use public address systems to notify the public of said proclamation and curfew hours and warn the public that violation of said curfew constitutes a misdemeanor and violators are subject to arrest.

(B) To close any and all streets, alleys and other public ways in the city to the public whenever it is necessary for the preservation of life and property and the maintenance of law and order.

(C) Order the closing of all retail package liquor stores and outlets.

(D) Order the closing of all bars and other establishments selling intoxicating liquor or beer by the drink.

(E) Order the discontinuance of selling, distributing or giving away gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle said sale to be limited to not more than one gallon per motor vehicle, or in the alternative, order the closing of gasoline stations and other establishments, the chief activity of which is the sale, distribution or dispensing of liquid flammable or combustible products.

(F) Order the discontinuance of selling, distributing, dispensing or giving away of any firearms or ammunition of any character whatsoever, or in the alternative, order the closing of all establishments or portions thereof where arms and/or ammunition are kept for sale or distribution.

(G) Issue such other orders as are imminently necessary for the protection of life and property.

('74 Code, § 1-3-3) (Ord. 58-1968)

§ 2-9-1-4 PUBLICATION OF ORDERS.

All orders issued pursuant to authority contained in § [2-9-1-3](#) regulating or prohibiting the conduct of business shall be delivered to the Police Department who shall forthwith inform the operator or persons in charge of the business affected, advising them that failure to comply with the order constitutes a violation of §§ [2-9-1-1](#) et seq. for which they may be arrested.

('74 Code, § 1-3-4) (Ord. 58-1968)

§ 2-9-1-5 EXTENSION OF EMERGENCY PROCLAMATION.

Any emergency proclaimed in accordance with the provisions of §§ [2-9-1-1](#) et seq. shall terminate after 48 hours from the issuance thereof, or upon the issuance of a proclamation determining an emergency no longer exists, whichever occurs first; provided, however, that such emergency may be terminated by the City Council prior to the termination of 48 hours or may be extended for such additional periods of time as deemed necessary by the City Council.

('74 Code, § 1-3-5) (Ord. 58-1968)

§ 2-9-1-6 FAILURE TO OBEY.

Every person remaining present at the place of any riot or unlawful assembly after they have been ordered to disperse by the police or any other lawful authority, except those public officers and persons assisting them in attempting to disperse the same, shall be deemed guilty of a violation of §§ [2-9-1-1](#) et seq.

('74 Code, § 1-3-6) (Ord. 58-1968) [Penalty, see § 1-1-99](#)

PART 2: OFFICE OF EMERGENCY PREPAREDNESS

§ 2-9-2-1 OFFICE OF EMERGENCY PREPAREDNESS.

(A) There is hereby established under the executive branch of the government of the city in accordance with Section 12-10-5 NMSA 1978, an Office of Emergency Preparedness consisting of:

(1) A Coordinator of Emergency Preparedness, appointed by and responsible to the Mayor of the city.

(2) Such additional professional and administrative staff as may be required to effectively carry out the city's emergency preparedness programs.

(3) During periods of emergency, all other city officers and employees, together with those forces enrolled to aid the Office of Emergency Preparedness, shall be considered as part of the Office of Emergency Preparedness.

(B) The purpose of the Office of Emergency Preparedness is to coordinate the efforts of all city agencies and employees, and non-governmental agencies in the preparation of contingency plans for any emergency endangering the lives and property of the citizens of the city. It shall be the duty of the Office of Emergency Preparedness to coordinate the development of plans for the effective employment of municipal resources to protect the lives and health of the citizens of the city, and the private and public property therein from the effects of natural or man-caused disasters, including acts of war, and to coordinate the implementation of said plans during periods of emergency. Such plans shall be coordinated with those of Bernalillo County and the State Office of Emergency Preparedness.

('74 Code, § 1-9-1) (Ord. 9-1975)

§ 2-9-2-2 COORDINATOR OF EMERGENCY PREPAREDNESS.

(A) The Coordinator shall be the executive head of the Office of Emergency Preparedness and shall be responsible to the Mayor for the organization, administration, and operation of the Office of Emergency Preparedness and all of the city's emergency preparedness programs. The Coordinator shall coordinate the city's emergency preparedness programs with programs of like kind placed into effect by the County of Bernalillo, private citizens, and all nongovernmental agencies, and shall act as a liaison and fully cooperate with the emergency preparedness agencies of the federal government and the State of New Mexico and its political subdivisions.

(B) Subject to approval by the Mayor, the Coordinator shall act for the government of the city in all matters pertaining to emergency preparedness, including the obligation of such municipal funds as may be appropriated for emergency preparedness purposes.

(C) The Coordinator shall prepare and submit an annual proposed budget for the Office of Emergency Preparedness expenditures to the Mayor.

(D) The Coordinator shall perform such other duties as the Mayor shall prescribe.

('74 Code, § 1-9-2) (Ord. 9-1975)

PART 3: CIVIL DEFENSE

§ 2-9-3-1 SHORT TITLE.

Sections [2-9-3-1](#) et seq. shall be known and cited as the "Continuity and Disaster Location of Government Ordinance of the City of Albuquerque."

('74 Code, § 1-2-1) (Ord. 2167)

§ 2-9-3-2 DEFINITIONS.

For the purpose of §§ [2-9-3-1](#) et seq. the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ATTACK. Any hostile action by an enemy of the United States which is intended to and does physically damage citizens or property in the United States.

DISASTER. The damage, or injury, caused by enemy attack to persons or property in this state of such magnitude that a state of martial law is declared to exist in New Mexico and a disaster emergency is declared by the Chief Executive Officer of the United States and the Chief Executive Officer of New Mexico.

DULY AUTHORIZED DEPUTY. A person who is presently authorized to perform all of the functions, exercise all of the powers and discharge all of the duties of an office in the event the office is vacant or at such times as it lacks administration due to the death, absence or disability of the incumbent officer.

EMERGENCY INTERIM SUCCESSOR. A person designated pursuant to §§ 2-9-3-1 et seq. for possible temporary succession to the powers and duties, but not the office, of a city officer in the event that such officer or any duly authorized deputy is unavailable to exercise the powers and discharge the duties of the office.

UNAVAILABLE. A vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office, or that the lawful incumbent of the office (including any deputy exercising the powers and discharging the duties of an office because of a vacancy) and his duly authorized deputy are absent or unable, for physical, mental, or legal reasons, to exercise the powers and discharge the duties of the office.

('74 Code, § 1-2-2) (Ord. 2167)

§ 2-9-3-3 DESIGNATION, STATUS, QUALIFICATIONS AND TERM OF EMERGENCY INTERIM SUCCESSORS.

(A) *Elective Officers.*

(1) Vacancy in the office of City Councillor should be filled as provided in Article IV, Section 9 of the City Charter. Vacancy in the office of Mayor should be filled as provided in Article V, Section 5 of the City Charter.

(2) Within 30 days after first entering upon the duties of his office, the Mayor shall, in addition to any duly authorized deputy, designate such number of emergency interim successors to his duties as chief executive officer (but not his veto power) and specify their rank in order of succession after any duly authorized deputy so that there will be not less than three duly authorized deputies or emergency interim successors or combination thereof. However, these provisions have effect only if the vacancy provisions of the City Charter, referenced in division (A)(1) of this section, do not apply or cannot fill the office of Mayor.

(B) *Appointive Officers.* The Mayor shall within the time specified in division (A)(2), in addition to any duly authorized deputy, designate for appointive officers including the Chief Administrative Office and all city department heads, such number of emergency interim successors to these officers and specify their rank in order of succession after any duly

authorized deputy so that there will be not less than three duly authorized deputies or emergency interim successors or combination thereof for each officer.

(C) *Review of Designation.* The Mayor shall review and, as necessary or appropriate, promptly revise the designations of emergency interim successors to insure that at all times there are at least three appropriate and qualified emergency interim successors or duly authorized deputies or any combination thereof for each officer specified.

(D) *Qualifications.* No person shall be designated or serve as an emergency interim successor unless he may under the constitution and statutes of this state and the charter or ordinances of this city, hold the office of the person to whose powers and duties he is designated to succeed, but no provision of any ordinance prohibiting an officer or employee of this city from holding another office shall be applicable to an emergency interim successor.

(E) *Status of Emergency Interim Successor.* A person designated as an emergency interim successor holds that designation at the pleasure of the designator; provided, that he must be replaced if removed. He retains this designation as emergency interim successor until replaced by another appointed by the authorized designator.

('74 Code, § 1-2-3) (Ord. 2167; Am. Ord. 67-1988)

§ 2-9-3-4 ASSUMPTION OF POWERS AND DUTIES OF OFFICER BY EMERGENCY INTERIM SUCCESSOR.

If in the event of an attack, any officer named in § [2-9-3-3](#)(A) and (B) and any duly authorized deputy is unavailable, his emergency interim successor highest in rank in order of succession who is available shall, except for the power and duty to appoint emergency interim successors, exercise the powers and discharge the duties of such officer. An emergency interim successor shall exercise these powers and discharge these duties only until such time as the lawful incumbent officer or any duly authorized deputy or an emergency interim successor higher in rank in order of succession exercises, or resumes the exercise of, the powers and discharge of the duties of the office, or until, where an actual vacancy exists, a successor is appointed to fill such vacancy or is elected and qualified as provided by law.

('74 Code, § 1-2-4) (Ord. 2167)

§ 2-9-3-5 RECORDING AND PUBLICATION.

The name, address and rank in order of succession of each duly authorized deputy shall be filed with the City Clerk and each designation, replacement, or change in order of succession of an emergency interim successor shall become effective when the designator files with the City Clerk the successor's name, address and rank in order of succession. The City Clerk shall keep on file all such data regarding duly authorized deputies and emergency interim successors and it shall be open to public inspection.

('74 Code, § 1-2-5) (Ord. 2167)

§ 2-9-3-6 FORMALITIES OF TAKING OFFICE.

At the time of their designation, emergency interim successors shall take such oath and do such other things, if any, as may be required to qualify them to exercise the powers and discharge the duties of the office to which they may succeed.

('74 Code, § 1-2-6) (Ord. 2167)

§ 2-9-3-7 QUORUM AND VOTE REQUIREMENTS.

In the event of an attack:

(A) Quorum requirements for the City Council shall be suspended; and

(B) Where the affirmative vote of a specified proportion of Council members for the approval of an ordinance, resolution or other action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

('74 Code, § 1-2-7) (Ord. 2167)

§ 2-9-3-8 TEMPORARY DISASTER LOCATION FOR THE CITY COUNCIL.

(A) Whenever a disaster makes it imprudent or impossible to conduct the affairs of city government at its regular location, the City Council may meet at any place, inside or outside the city limits, at the call of the presiding officer or any two members of the City Council, and designate by ordinance a temporary disaster location of the city government, which place shall remain the seat of city government until the City Council establishes a new location or until the disaster is declared ended by the legislature of the state and the seat is returned to its normal location.

(B) Any official act or meeting required to be performed at the seat of the City Council is valid when performed at a temporary disaster location.

('74 Code, § 1-2-8) (Ord. 2167)

ARTICLE 10: ACCOUNTABILITY IN GOVERNMENT

Section

- [2-10-1](#) Short title
- [2-10-2](#) Findings; purpose; goals
- [2-10-3](#) Definitions
- [2-10-4](#) Creation of the Office of Internal Audit and Investigations; resources; staff
- [2-10-5](#) Creation of Committee; duties; powers; membership
- [2-10-6](#) Selection of Director
- [2-10-7](#) Director's duties; responsibilities; authority; administrative subpoena power
- [2-10-8](#) Professional standards
- [2-10-9](#) Public records; confidentiality
- [2-10-10](#) Audit Division; scope of audits
- [2-10-11](#) Annual audit plan
- [2-10-12](#) Special audits; audit reports
- [2-10-13](#) Reports to the Committee
- [2-10-14](#) Reporting
- [2-10-15](#) Contract auditors, investigators, consultants, and experts
- [2-10-16](#) Penalty; cooperation; retaliation prohibited

§ 2-10-1 SHORT TITLE.

Sections [2-10-1](#) through [2-10-16](#) may be cited as the “Accountability in Government Ordinance”.

(Ord. 1-2005)

§ 2-10-2 FINDINGS; PURPOSE; GOALS.

(A) The Council finds that good governance, transparency and accountability are critical in the public sector for the effective and credible functioning of a healthy democracy, and in fulfilling the government's responsibility to citizens and taxpayers. Transparent and reliable reporting and effective auditing in government serve to promote accountability, enhance the effectiveness of government services to its citizens, and increase the public's confidence in their government.

(B) The Mayor and City Council share a duty to insure that the actions of public officials, employees and contractors of the city are carried out in the most responsible manner possible and that city policies, budgets, goals and objectives are fully implemented. To accomplish this end, the city requires the services of an independent organization to perform internal audits, conduct management studies and investigate claims of waste, fraud and mismanagement.

(C) The Director's goals are to:

(1) Conduct audits and investigations in an efficient, impartial, equitable and objective manner;

(2) Prevent and detect fraud, waste and abuse in city activities including all city contracts and partnerships;

(3) Propose ways to increase the city's legal, fiscal and ethical accountability through the use of audit and management studies to insure that tax payers' dollars are spent in a manner that improves the economy of operations; and

(4) Deter criminal activity through independence in fact and appearance, audit, investigation and interdiction.

(Ord. 1-2005; Am. Ord. 45-2006)

§ 2-10-3 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUDITEES. Auditees are the city related departments, programs, activities, agencies, vendors, contractors or other city related entities affected by an audit or investigation.

COMMITTEE. The Accountability in Government Oversight Committee.

CONTRACTORS. All city contractors.

DIRECTOR. The Director of the Office of Internal Audit and Investigations.

EMPLOYEE. All city employees.

EXPANDED SCOPE AUDIT. An audit whose original scope is modified by the Director or the Committee based on circumstances and findings uncovered during the audit.

OFFICIAL. The Mayor and Councilors.

PUBLISHED. An audit report is published when it is approved by the Committee and distributed in final form to the auditees, to the Mayor and Chief Administrative Officer, and to the City Council. A published audit report is available on request to the public.

SPECIAL AUDITS. Exigent audits not included in the annual audit plan, because the need for the audits was not foreseen when the audit plan was adopted.

(Ord. 1-2005)

§ 2-10-4 CREATION OF THE OFFICE OF INTERNAL AUDIT AND INVESTIGATIONS; RESOURCES; STAFF.

(A) The Office of Internal Audit and Investigations is created as an independent office of city government. The Office of Internal Audit and Investigations is not part of the city's executive branch or the City Council. The Director shall report to the Committee.

(B) The Director shall hire the Internal Auditor. The Internal Auditor shall be able to manage a professional audit staff, analyze financial and property records and evaluate operations for economy, efficiency and program results.

(C) The Director shall hire the Inspector General. The Inspector General shall be able to manage a staff of professional investigators, coordinate his investigations with the Internal Auditor and prepare a file for use by a prosecutorial agency.

(D) The Office of Internal Audit and Investigations shall be funded from the General Fund.

(E) The Director shall establish the organizational structure appropriate for carrying out the responsibilities and functions of the Office of Internal Audit and Investigations.

(F) The Director shall select and hire his employees for the efficient and effective administration of the Office of Internal Audit and Investigations.

(G) The Office of Internal Audit and Investigations shall provide staff support to the Committee.

(H) Neither the Director nor any employee of the Office of Internal Audit and Investigations shall engage in any partisan political activities or the political affairs of the city.

(Ord. 1-2005)

§ 2-10-5 CREATION OF COMMITTEE; DUTIES; POWERS; MEMBERSHIP.

(A) The “Accountability in Government Oversight Committee” is created. The Committee shall consist of five members from the community at large. The Mayor and one Councilor appointed annually by the Council President shall be nonvoting ex officio members. The Mayor and the appointed Councilor may send designees to the Committee meetings. At least one Committee member shall be a CPA, at least one Committee member shall have a law enforcement or law background and at least one Committee member shall be a professional management consultant.

(B) As vacancies on the Committee occur, the Council and Mayor shall alternatively appoint new members with the Council making the first appointment. All appointments shall be subject to Council approval. The existing Committee members may make recommendations to the Mayor and Council for candidates to fill vacancies on the Committee. If either the Mayor or Council fails to name a replacement Committee member within 45 days of the vacancy, then the other body shall make the appointment. The Committee members shall be appointed for staggered terms of three years unless an appointment is to fill a vacancy. An appointment to fill a vacancy shall be for the unexpired term. Terms shall begin on the first day of September. The Committee members shall elect the Committee Chair annually.

(C) The Committee shall meet monthly or upon the call of the Chair or a majority of its members.

(D) Committee members shall not receive compensation for their service. Voting members of the Committee shall not serve on any other city board, commission or task force.

(E) The Chief Administrative Officer and the Director of Council Services or their designees may attend all Committee meetings.

(F) If an Official is the subject of an investigation, then the ex officio members, their designees, the Chief Administrative Officer and the Director of Council Services shall be recused from all meetings where that particular investigation is being discussed and they shall not have access to the investigative file during the pending investigation.

(G) The Committee is a management committee and not a public board, commission or committee as specified by §§ 2-6-1-1 et seq. and not subject to the Open Meetings Act. The Committee is not formed to formulate public policy nor is authority to formulate public policy delegated to the Committee.

(H) The Committee may remove the Director by a majority vote. Within five days of the Director’s removal, the Committee shall report the reasons for removal to the Mayor and the Council.

(I) The Committee shall annually recommend a budget to the Mayor and Council that may include a salary adjustment for the Director.

(J) The Committee shall provide the Director with guidance, priorities and potential areas for investigation. The Committee may also lend advice to the Director regarding technical issues that may arise.

(K) The Committee shall coordinate the work of the Office of Internal Audit and Investigations with the Mayor's and Council's needs.

(L) The Committee shall not prohibit the Director from initiating, carrying out or completing any audit, investigation or review. If a majority of the Committee members finds that an audit, investigation or review is questionable, then the Committee shall issue a cautionary statement to the Director.

(M) The Committee shall review and approve all audit and investigatory reports at each meeting.

(N) The Committee shall prepare a job description, specify qualifications for applicants, work with the Director of the Human Resources Department to advertise for the position and develop the applicant search procedure and make recommendations to the Council on the selection of the Director.

(O) Any discipline of the Director, as provided by § [3-1-6](#) ROA 1994, shall be by the Committee. The Director shall report to the Committee for approval of vacation, sick, emergency and city business leave.

(Ord. 1-2005)

§ 2-10-6 SELECTION OF DIRECTOR.

(A) The Committee, through its staff, shall receive applications from candidates, interview candidates and shall submit to Council the names of the three candidates that it finds to be the best qualified to be Director indicating its ranking and the Council shall select the Director from the three by adoption of a resolution. The Committee's recommendation to Council shall be based on the candidates' integrity, capability for strong management and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration or other closely related fields.

(B) No former or current official or employee, except for a person who held the position of Director, Internal Auditor or Inspector General may be appointed Director within four years of that person's period of service.

(C) The Director shall be certified as a Certified Inspector General or obtain that certification within two years of his appointment. Other professional certifications, such as certified public accountant, certified internal auditor and certified fraud examiner are recommended.

(D) Prior to the final selection of the Director, the candidate shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the Committee to obtain the candidate's Federal Bureau of Investigation record. Records and related information shall be privileged and shall not be disclosed to anyone other than Committee members. The city shall pay for the cost of obtaining the Federal Bureau of Investigation records.

(Ord. 1-2005)

§ 2-10-7 DIRECTOR'S DUTIES; RESPONSIBILITIES; AUTHORITY; ADMINISTRATIVE SUBPOENA POWER.

(A) If the Director detects apparent or potential violations of law or apparent instances of misfeasance or nonfeasance by an official or auditee, he shall report the irregularities in writing to the Committee. If the irregularity is criminal in nature, the Director shall immediately notify the appropriate prosecuting authority. If the irregularity is found in response to a complaint filed under the provisions of the Whistleblower Ordinance, the Director shall notify the appropriate city department pursuant to the Whistleblower Ordinance. If the irregularity warrants an audit, then the Director shall refer the matter to the Internal Auditor. The Director shall not accept complaints related to discrimination or labor law matters, or other matters that are the subject of pending litigation.

(B) The Director shall receive and investigate complaints referred to him by the Board of Ethics and Campaign Practices. In addition, the Director shall receive and evaluate complaints referred to him by any official, employee, contractor or the public and initiate an investigation when he deems it appropriate. The Director may also initiate an investigation. The Director shall determine whether the complaint should be referred to the Internal Auditor or to the Inspector General.

(C) Upon request of the Mayor or City Council, the Director shall assist or provide resources to assist city departments in the review of state and federal legislation, city ordinances, resolutions, rules, regulations and policies pertaining to that particular city department or office.

(D) The Director shall promulgate regulations to establish procedures for the Office of Internal Audit and Investigations.

(E) The Director shall have the power to subpoena witnesses, administer oaths and require the production of records subject to the New Mexico Rules of Civil Procedure. In the case of a refusal to obey a subpoena issued to any person, the Director may make application to any District Court in the state that shall have the jurisdiction to order the witness to appear before the Director and to produce evidence if so ordered, or to give testimony touching on the matter in question.

(F) The Director shall maintain a complete file of each audit report and each report of other examinations, investigations, surveys and reviews made under legislative or special Committee authority for at least six years. The file should include audit work papers and other supportive material directly pertaining to the report. Records may be retained in electronic format at the Director's election.

(G) The Director shall accept appointment as an investigator pursuant to Article XII, Section 8 of the Charter and shall investigate any alleged violation of the Code of Ethics or the Elections Code that the Board of Ethics and Campaign Practices directs him to investigate.

(H) The Director shall not investigate complaints that are under the jurisdiction of the Police Oversight Commission or the Internal Affairs Division of the Albuquerque Police Department nor shall he access any Internal Affairs files.

(I) In cases where the Director deems it appropriate because of an audit or investigation, he may refer opportunities for increased efficiency to the Office of Management and Budget to work with respective departments on management and process improvement.

(Ord. 1-2005; Am. Ord. 45-2006)

§ 2-10-8 PROFESSIONAL STANDARDS.

(A) The Inspector General's investigations and inspections shall conform to the Association of Inspector General's professional standards.

(B) The Internal Auditor shall adhere to generally accepted government auditing standards in conducting its work and will be considered independent as defined by those standards.

(C) The Office of Internal Audit and Investigation's audits, investigations, inspections and reviews shall be subject to quality assurance reviews by an appropriate professional non-partisan objective group every three to five years. A copy of the written report resulting from this review shall be furnished to the Committee.

(Ord. 1-2005)

§ 2-10-9 PUBLIC RECORDS; CONFIDENTIALITY.

(A) The Director shall maintain the confidentiality of any public records that are made confidential by law and shall be subject to the same penalties as the custodian of those public records for violating confidentiality statutes.

(B) During the course of audit and investigation activities, all records shall be considered deliberative in process and not available for outside review.

(C) Prior to publishing a report, the Director may share selected information with other city departments if the information is needed for decision-making purposes; otherwise, reports remain confidential until published, at which time they become public record.

(D) The names and identities of persons making complaints and providing information shall not be disclosed without the written consent of the person unless otherwise required by law or judicial processes.

(E) Published reports shall be public records except that the Director shall delay the publication of reports when criminal conduct is found and the appropriate law enforcement authority is pursuing an investigation and release of the report might jeopardize further investigation. An audit whose release has been delayed shall be published promptly at the end of the condition giving rise to the delay.

(F) The Director may release a preliminary draft of an audit of anyone other than a city department or agency to the auditee for review and comment if the auditee agrees to restrict its use and to maintain the confidentiality of the information.

(Ord. 1-2005)

§ 2-10-10 AUDIT DIVISION; SCOPE OF AUDITS.

(A) The Director shall establish an Internal Audit Division. The head of the Internal Audit Division shall be the Internal Auditor.

(B) The Internal Audit Division shall conduct audits, forensic audits and Expanded Scope Audits of all auditees to independently determine whether:

- (1) The city, state or federal law authorizes implemented activities and programs;
- (2) The objectives intended by city, state or federal law are efficiently and effectively accomplished in the implementation of activities and programs;
- (3) The expenditure of funds complies with applicable laws;
- (4) The revenues are properly collected, deposited and accounted for;
- (5) Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;
- (6) Financial and other reports fairly and fully disclose all information as required by law necessary to evaluate and ascertain the nature and scope of programs and activities;
- (7) Management established operating and administrative procedures and practices, accounting internal control systems and internal management controls are adequate and functioning as intended; and
- (8) City policies, budgets, goals and objectives are fully implemented.

(C) At an official's request, the Director shall perform financial and management studies, as special audits pursuant to § [2-10-12](#), of the causes of proposed, actual over or under expenditures of the annual adopted budget, or other failures to comply with the annual adopted budget.

(Ord. 1-2005)

§ 2-10-11 ANNUAL AUDIT PLAN.

(A) Prior to the beginning of each fiscal year, the Director shall submit an annual audit plan to the Committee for review and comment. As part of these deliberations, the officials shall be invited to recommend areas for inclusion in the plan. The plan shall include the auditees scheduled for audit during the year, a statement of the scope of the audit and the estimated time required to complete the audit.

(B) The Director shall review city expenditures and encumbrances at the end of the second through fourth quarters of each fiscal year for each fund, department and program strategy. Based on historic spending patterns, the Director shall identify funds, departments and program strategies that are projected to exceed or under spend their appropriated budgets for that fiscal year by \$100,000 or five percent of the line item authority, whichever is lower. For each item, the Chief Administrative Officer shall identify the cause of the over or under spending and a plan to bring the item into compliance with the adopted budget for that fiscal year. The Internal Audit Division shall submit a budget implementation report for each of the second through fourth quarters of the fiscal year to the Council, including its projected over and under expenditures by fund, department and program strategy and the Chief Administrative Officer's comments regarding the causes of the over or under expenditures and plans to bring the items into compliance with the adopted budget for that fiscal year.

(C) The annual audit plan shall be transmitted to the Council for final approval as a resolution.

(D) This plan may be amended by resolution during the year after review with the Committee.

(E) In the selection of audit areas, the determination of audit scope and the timing of audit work, the Director should consult with federal and state auditors and independent auditors so that the desirable audit coverage is provided and audit effort may be properly coordinated.

(F) The Director shall make reports at least quarterly to the Committee on the status of the work plan.

(Ord. 1-2005; Am. Ord. 45-2006)

§ 2-10-12 SPECIAL AUDITS; AUDIT REPORTS.

(A) The Director may initiate a special audit without outside approval if expediency is necessary for an adequate audit response.

(B) If the Director does not expect a special audit to consume more than 2% of his budgeted audit hours, no authorization is required.

(C) If the Director expects a special audit to consume more than 2% of his budgeted audit hours, but not consume as much as 10% of his budgeted audit hours, the Committee shall approve the special audit as quickly as possible by telephonic or electronic vote; if the Committee declines approval, the Director shall terminate the special audit immediately.

(D) In all other cases, a special audit shall promptly be submitted for approval by the Council as an amendment to the annual audit plan. The Committee shall make a recommendation on the special audit to the Council. If the Council declines approval, that special audit shall immediately terminate.

(E) In all cases, the Director shall, within 48 hours of implementation, notify the Committee that a special audit is being undertaken.

(F) A preliminary draft of the audit report shall be forwarded to the auditees and the Chief Administrative Officer for review and comment before it is provided to the Committee for pre-publication review. The auditees, including departments whose assistance is needed in order to accomplish a recommendation, shall respond to the Director, in writing, within 14 days of receipt of the audit report.

(G) The auditees' written response shall specify agreement with each of the audit findings and recommendations or reasons for disagreement with findings or recommendations. The auditees' written responses shall include auditees' plans for implementing solutions to identified problems including timetables to complete such activities.

(H) Auditees' comments to the preliminary draft may be utilized to amend the report if appropriate. If the preliminary audit report is amended, the auditees will be given a copy of the amended draft, and the auditees will be given seven to 14 days, as determined by the Director and the auditees, to respond to the amended draft of the audit report.

(I) The Director shall include the auditees' responses in the audit report.

(Ord. 1-2005)

§ 2-10-13 REPORTS TO THE COMMITTEE.

(A) Each investigation, audit and special audit shall result in a written final report.

(B) The Director shall submit five copies of each report to the Committee and shall retain a copy as a permanent record.

(C) If appropriate, the report shall contain the professional opinion of the Director or the contract auditor concerning the financial statements issued by the auditees, or if the audit is an expanded scope audit or a management audit, the report shall contain the professional conclusions of the auditor regarding the management activities audited.

(D) The Internal Auditor's audit reports shall include:

- (1) A precise statement of the scope encompassed by the audit;
- (2) A statement that the audit was performed in accordance with generally accepted government auditing standards;
- (3) A statement that an examination for compliance with applicable laws, policies and regulations was conducted, and a presentation of the findings associated with that examination;
- (4) A statement of significant audit findings, including a statement of the underlying causes, evaluative criteria used and the current and prospective significance of the findings;
- (5) A statement that internal control systems were examined and a report of any material weaknesses found in the internal control systems;
- (6) Statements of response submitted by the auditees relevant to the audit findings;
- (7) A concise statement by the auditees of the corrective actions previously taken or contemplated as a result of the audit findings and a timetable for their accomplishment; and
- (8) Recommendations for additional necessary or desirable action.

(E) The Inspector General's report shall include:

- (1) Specific citations to the law or policy that was allegedly violated;
- (2) An assessment of the validity of the allegations under investigation, including whether the allegations are criminal or civil in nature;
- (3) A list of the employee or official's supervisors;
- (4) A description of any corrective action or discipline to date;
- (5) If the case of a criminal violation, an evaluation of the likelihood of successful prosecution;
- (6) A summary of all of the direct and circumstantial evidence supporting the allegations; and
- (7) A description of which prosecutorial agencies may be contacted, have been involved or may be contacted.

(Ord. 1-2005)

§ 2-10-14 REPORTING.

(A) The Director shall annually report to the Council and the Mayor regarding his activities and investigations.

(B) Within 60 days of the end of each fiscal year, the Director shall issue a published report to the Committee that separately lists audit reports, review reports and other investigative or assistance efforts completed during the fiscal year.

(C) The Director shall notify members of the media and the public of the issuance of the published report. The Office of Internal Audit and Investigations shall provide copies of the published report upon request.

(Ord. 1-2005)

§ 2-10-15 CONTRACT AUDITORS, INVESTIGATORS, CONSULTANTS, AND EXPERTS.

Upon approval of the Committee, the Director may obtain the services of certified public accountants, qualified management consultants, certified fraud examiners, forensic auditors or other professional experts necessary to perform the functions of the Office of Internal Audit and Investigations. Contractors performing an audit or investigation shall not have any financial interest in the affairs of the auditees, officials or employees. The Director shall coordinate and monitor auditing and investigations performed by persons under contract to the Director.

(Ord. 1-2005)

§ 2-10-16 PENALTY; COOPERATION; RETALIATION PROHIBITED.

(A) All city officials, employees and contractors shall promptly notify the Director of every instance of theft or other disappearance of cash, check, or property, of misfeasance or nonfeasance, defalcation, improper governmental actions as defined in the Whistleblower Ordinance and non-compliance with federal and state law, city ordinances and city regulations of which they are aware.

(B) All city officials, employees and contractors shall provide the Director full and unrestricted access to all city offices, employees, records, information, data, reports, plans, projections, matters, contracts, memoranda, correspondence, electronic data, property, equipment and facilities and any other materials within their custody. At the Director's request, an official, employee or contractor shall prepare reports and provide interviews. If an official, employee, vendor or contractor fails to produce the requested information, the Director shall notify the Committee and make written request to the Chief Administrative Officer for his assistance in causing a search to be made and germane exhibits to be taken from any book, paper or record excepting personal property. The Chief Administrative Officer shall require the officials, employees, vendors or contractors to produce the requested information.

(C) Every city contract, bid, proposal, application or solicitation for a city contract and every application for certification of eligibility for a city contract or program shall contain a

statement that the individual understands and will abide by all provisions of the Accountability in Government Ordinance.

(D) No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with or assisting the Director in the performance of his office.

(E) Each and every violation of this article is a criminal violation subject to the provisions of § [1-1-99](#) ROA 1994.

(F) Any official or employee who violates the Accountability in Government Ordinance may be subject to discipline as may be specified in the Merit System Ordinance or any applicable collective bargaining agreement.

(Ord. 1-2005)

ARTICLE 11: CITY BUDGET

Section

- [2-11-1](#) Intent
- [2-11-2](#) Definitions
- [2-11-3](#) Process and sequence for establishing goals and objectives
- [2-11-4](#) Program reviews by the City Council
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- [2-11-11](#) Conference Committee on the Budget
- [2-11-12](#) Approval constitutes proposal as budget; expenditures must be authorized
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§ 2-11-1 INTENT.

(A) Article IV, Section 10(b) of the City Charter specifies that the Council shall establish and adopt five-year goals and one-year objectives for the city, which goals and objectives shall be reviewed and revised annually by the Council. Article IV, Section 10(d), Article V, Section 4(f), and Article VII, Section 1 of the Charter specify that the city operating budget should be formulated by the Mayor, in consultation with the Council and consistent with the goals and objectives of the City. The Charter indicates that other legislation and policies of the City are to be consistent with these goals and objectives as well. Article VII, Section 3 of the Charter requires the Mayor to propose the budget to the Council by April 1 each year and the Council to approve the budget as proposed or amend and approve it within sixty days after it is proposed by the Mayor.

(B) To implement these City Charter provisions, §§ [2-11-1](#) et seq. a process for adopting goals and objectives which will be valuable in themselves and also will be major factors in determining funding for City programs and improvements in the operating budget and the capital improvements budget.

(C) To adopt a goals and objectives process that encourages active citizen participation, that is linked to the budget process, and that encourages performance measurement.

(Ord. 16-2001)

§ 2-11-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMUNITY PLANNING AREAS. To the extent practicable, goals, strategies, and objective should vary depending on conditions within the different Community Planning Areas.

FIVE-YEAR GOALS. A concise statement that summarizes a set of related results or outcomes as defined by desired community or customer conditions. A goal can be a description of what Albuquerque would be like if the goal were achieved. It is achievable and lends itself to measurement. A goal represents a long-term purpose and direction that addresses the big picture. A goal is broad, but not vague. Goal measurement is based on tracking the changes in specific desired conditions.

ONE-YEAR OBJECTIVES. Objectives are specific steps taken by the City for achieving goals. For the most part, objectives should be tangible products rather than the activities that produce the products. Objectives are the results of explicit strategies to achieve the goals. An objective describes in specific and measurable terms the results a program is expected to achieve toward a certain goal. Each objective should be attainable within a specified period of time, preferably within a fiscal year or two consecutive fiscal years.

PERFORMANCE MEASUREMENT. Performance measurement is a systematic approach to quantify and analyze activities to determine the amount of service delivered and/or work performed, as well as how effective, efficient, and responsive services are and what impact they have on the community and customer. Goal Progress Indicators quantify the progress made towards achieving goals.

VISION. A short description of the future which is sought for the community.

(Ord. 16-2001)

§ 2-11-3 PROCESS AND SEQUENCE FOR ESTABLISHING GOALS AND OBJECTIVES.

(A) *Criteria for selection.* Five-year goals should be selected only if they are of priority importance to the welfare of the city. The five-year goals address improving the physical characteristics of the City, guiding the City's growth and meeting human needs. The Albuquerque Progress Report and the City/County Comprehensive Plan are guiding documents for developing the five year goals. The fact that an outcome directly addressed by city government service is not mentioned in the five-year goals does not imply that the service or function will not continue as usual; it means only that there is not a special effort to reach some goal-related outcome in that area during the coming five years. The Mayor and City Council will collaborate to establish the five-year goals. The City Council staff shall direct the goals and objectives review, formulation, and adoption process consistent with the City Charter, however, these tasks may be delegated to the Mayor's staff.

(B) *Process to develop community perceptions/ expectations.* The purpose of this phase is to obtain citizen involvement in setting long-term direction in the vision and goals process.

(1) A goals forum to present progress reports, revisit the vision, and review/develop goals shall be held every four years in July beginning in 1998. The outcome of the goals forum shall be utilized as input into the revision of the vision, five-year goals, and other City plans and policies, as they are developed or revised.

(2) A report shall be produced and presented to the Mayor and City Council within three months of the goals forum. This report shall recommend a vision and goals.

(3) This process shall be facilitated by Shared Vision, Inc. or other not-for-profit organization with a similar mission in partnership with the City and shall include the Indicators Progress Commission, Environmental Planning Commission and other City commissions which influence or track important community and customer conditions.

(4) Adoption of an objective by the City Council carries with it an obligation to carry out this objective in the referenced fiscal year or years and for the Administration to incorporate this objective into the Mayor's proposed budgets.

(C) *Process to develop and adopt five-year goals.* The purpose of this phase is to review the vision and goals, recommend revisions reflecting community consensus and conditions, and act on these recommendations.

(1) Every four years, the Mayor and City Council shall review the goals forum report, conduct a public hearing, and adopt a vision and goals within six months of the goals forum.

(D) *Process to determine one-year objectives.* The purpose of this phase is to establish measurable objectives to carry out the five-year goals by integrating such objectives into the annual City budget.

(1) The City Council and the Mayor shall develop annual objectives consistent with the five-year goals. These objectives may have up to a two year implementation cycle. New objectives will be contained in a biennial new priority objectives resolution beginning for Fiscal Year 2003. Regarding the resolution for Fiscal Year 2004 and biennially thereafter, objectives will be updated based on progress made in the first year and contained in a revised priority objectives resolution.

(2) The City Council shall hold at least one public hearing, meeting as the Committee of the Whole, at which the public can propose objectives and comment on proposed or revised objectives respectively for the coming year.

(3) The City Council shall annually adopt or revise and adopt objectives aimed to accomplish each of the goals and objectives to be reflected in the operating and capital budgets of the city.

(E) *Timing.* In sufficient time for consideration in the formulation of the Mayor's proposed budget and, in any case, prior to November 30 of each year, except in years in which there is a Mayoral election, in which case prior to December 31, the Council shall review existing goals and objectives and proposals for revisions of objectives and shall adopt objectives for the following year. The purpose of this phase is to enable the Mayor and City Council to integrate the five-year goals and one-year objectives into the City's budgeting process.

(F) *Progress reports.* The purpose of this phase is to have a mechanism for accountability and monitoring of the Goals and Objectives Process. It is intended that such progress reports will include performance measurements of the Goals and Objectives Process as well as the budget process.

(1) By September 1 of each year, a status report on the prior year's one-year objectives will be presented to the Mayor and City Council. Each year a status report on the current one-year objectives will be prepared and presented by the Mayor to the City Council at a Committee of the Whole meeting held each year as required in [§2-11-6\(B\)](#) ROA 1994.

(2) Biennially in January of even numbered years, a roundtable discussion shall be held among the City Administration, City Council, Indicators Progress Commission, the Environmental Planning Commission and other appropriate commissions to review progress on achieving the five-year goals.

(3) The roundtable meeting held immediately prior to the conduct of the goals forum will discuss the structure of the forum.

(4) Shared Vision, Inc. or similar not-for-profit organization as determined by the Mayor and City Council shall provide the leadership to schedule and facilitate the roundtable meetings.

(5) On an annual basis, the City shall conduct a "Citizens Perception of Conditions Survey" to poll the residents on the perception of City governmental services and community conditions related to the Goals.

(6) At least every two years, a progress report shall be generated. This report will provide measurements of desired community conditions related to the goals data through a review of census data, locally generated socioeconomic data, citizen survey information, goal progress indicators, and other information indicating the current situation and progress towards the goals to date. For each measurement, the report shall include historical data for at least ten years, if such data are available and reliable.

(7) The Indicators Progress Commission shall have the lead responsibility to facilitate the production of this report for presentation to the Mayor and City Council every two years and to the goals forum participants every four years.

(8) On an annual basis, during the month of September, City Administration including key departmental staff and City Council shall meet to review the five-year goals, community conditions, strategies, programs, and one-year objectives.

(G) *Staffing.* Both the Mayor and City Council shall identify appropriate staff to collaborate in the development and implementation of the Goals and Objectives Process.

(Ord. 16-2001)

§ 2-11-4 PROGRAM REVIEWS BY THE CITY COUNCIL.

The City Council, meeting as a Committee of the Whole, may hold up to three public hearings which shall be programmatic reviews of city operations or departments which are Council priorities, especially as identified in the adopted city goals and objectives. Since these reviews shall focus in part on city goals, they may be cross departmental and involve public agencies external to city government. These hearings shall be held between September 15 and January 15. The subjects of these Council reviews shall be determined by the Chairperson of the Committee of the Whole, the Council President, and other members of the Council. This group and the Mayor shall provide input on the topics of the program reviews to the Council President.

(Ord. 35-1994; Am. Ord. 16-2001)

§ 2-11-5 PARTICIPATION OF THE COUNCIL IN PUBLIC PRESENTATIONS ON BUDGET-RELATED MATTERS.

The public shall be encouraged to participate in the city budget review and adoption process. The Council and the Mayor are encouraged to discuss budget and budget-related policy issues at community forums. Whenever the Mayor expends public funds to inform the public about his proposed budget or budget-related programs, the Council shall be invited to participate in such forum. The Mayor shall extend the invitation to the City Council through the President of the Council.

(Ord. 35-1994)

§ 2-11-6 PREPARATION OF CITY BUDGET; DEPARTMENTAL REQUESTS; BUDGET PROPOSAL.

(A) The Mayor shall prepare a proposed city operating budget from the departmental requests, taking into consideration the requests of the departments, and the resources anticipated to be available to the city for the fiscal year for which the budget is prepared.

(B) Each year, between the first day of December and the first City Council meeting in January, the Mayor, or his appointed representative, shall hold a series of meetings, not less than two in number, with the City Council to discuss the preparation of the budget for the next fiscal year.

(C) During the preparation of the proposed City Budget by the Mayor, he shall furnish any requested information on departmental requests to the staff of the City Council and shall cooperate with City Council staff so that it may monitor the budget process and prepare preliminary analyses and other information for the City Council.

(D) The Mayor shall propose an operating budget to the Council no later than April 1 of each year.

('74 Code, § 1-8-4) (Ord. 64-1974; Am. Ord. 7-1988; Am. Ord. 54-1988; Am. Ord. 1-1991; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001; Am. Ord. 9-2005; Am. Ord. 5-2007)

§ 2-11-7 BUDGET — CONTENTS AND FORMAT.

(A) The Mayor's operating budget proposal submitted to the Council shall include:

- (1) The Mayor's budget message;
- (2) An annual appropriation resolution recommended by the Mayor;
- (3) A complete statement of the non-capital project financial operation of the city for the fiscal year last completed;

(4) A comparable statement for the current fiscal year including expenditures to date and anticipated expenditures to the end of that year;

(5) A financial plan in comparable form for the fiscal year commencing on July 1 of the year in which the budget proposal is submitted. Except as otherwise provided by § [2-11-11](#), the Non-Capital Project Financial Plan for the ensuing fiscal year shall include:

(a) All proposed expenditures for the administration, operation and maintenance of all departments of city government;

(b) All interest and debt redemption charges;

(c) All anticipated revenues and other available resources by source and amount;

(d) The proposed means of financing all proposed expenditures.

(6) A performance plan in comparable form for the fiscal year commencing on July 1 of the year in which the budget proposal is submitted to include:

(a) Descriptions of all programs, services, and activities to include strategies, missions, customers, key initiatives, and desired results, organized by Five Year Goal, that are proposed in the Mayor's Budget;

(b) Performance measures, as defined in § [2-11-2](#), associated with all programs, services, and activities;

(c) Consistent with the Financial Plan defined in § [2-11-7\(A\)\(5\)](#), all proposed expenditures for the administration, operation, and maintenance of all programs, services, and activities, organized by Five Year Goal and identified by Fund.

(B) A full-program budget will be prepared for all city departments each year. The program budget shall clearly identify each program that is proposed to be implemented or continued in the ensuing fiscal year and shall include the projected costs of each program.

(C) The budget proposal shall not propose expenditures in excess of resources anticipated to be available to the city for the fiscal year for which the budget is proposed. If new programs are proposed, a detailed recommendation and justification of the program shall be provided which must include the estimated annual costs of the program and the source of revenues and other resources for financing the program. All new programs must be identified as such in the budget proposal.

(D) Along with publication of the proposed budget, the Office of Management and Budget shall produce a separate document to serve as a citizen's guide to understanding the budget process and the financial plan for the upcoming fiscal year. This guide shall explain how the budget is organized, justify significant expenditures that are included in the proposed budget, and

outline revenue sources. This document shall be made available to the general public in an effort to encourage public awareness and citizen involvement in the budget process.

('74 Code, §1-8-5) (Ord. 64-1974; Am. Ord. 17-1975; Am. Ord. 22-1977; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001)

§ 2-11-8 BUDGET REVIEW COMMITTEE.

The Mayor, the Chief Administrative Officer, the Chairperson of the Council Committee of the Whole, and the Council President shall constitute a joint review committee of the Budget. This committee shall meet at least quarterly or at the call of either the Mayor or the Council President. The committee shall review preliminary year end reports, summary financial and management reports, revenue forecasts, status of the current year budget and budget issues, and discuss all matters concerning the contents and format of the city annual operating budget and the city's goals and objectives, prior to introduction to the City Council.

(Ord. 40-1995; Am. Ord. 16-2001)

§ 2-11-9 BUDGET PROPOSAL — PRINTING AND INDEXING.

The budget proposal shall be printed and indexed prior to its submittal to the Council. Sufficient copies of the budget proposal shall be prepared to allow for distribution to members of the Council, city department heads, and other interested parties as may be deemed reasonable by the Chief Administrative Officer or his designee.

('74 Code, § 1-8-6) (Ord. 64-1974; Am. Ord. 22-1977; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001)

§ 2-11-10 CONSIDERATION OF BUDGET PROPOSAL BY THE COUNCIL.

(A) After receiving the budget proposal from the Mayor the Council shall schedule at least three public hearings on it. Any fee or rate adjustment proposal for the upcoming fiscal year and projected revenue requirements for the following two fiscal years shall be submitted to the Council at the same time as the budget proposal. As a result of its deliberations and the information gathered at the public hearings, the Council may amend the budget proposal at any time prior to May 31. If the Council fails to approve a budget within that time limit, the budget proposal as submitted by the Mayor is deemed approved.

(B) The Mayor or his representative shall be present at all public hearings on the budget proposal and fee or rate adjustment proposals. The Chief Administrative Officer, or his representative, shall be available to the Council at its request during any of its deliberations on the budget proposal.

(C) *Definition.* As used in this section **AMEND** includes complete revision or substitution.

('74 Code, § 1-8-7) (Ord. 64-1974; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001; Am. Ord. 5-2007)

§ 2-11-11 CONFERENCE COMMITTEE ON THE BUDGET.

(A) A Conference Committee on the Budget shall meet to help resolve any disagreements between the Mayor and the Council concerning the city budget. The Conference Committee on the Budget shall consist of the members of the Budget Review Committee.

(B) In the period from March 1 through the adoption of the annual operating budget, the Conference Committee on the Budget shall meet at the request of the Mayor or any Councillor. The following procedures shall govern this process:

(1) Issues presented to the Conference Committee on the Budget should be of a significant or critical nature concerning the City Budget;

(2) Issues presented to the Conference Committee on the Budget should be issues about which the development or clarification of performance measurement data or other information can contribute significantly to the formation of options or recommendations;

(3) After consideration of the issues, the Council-designated members of the Conference Committee on the Budget may present recommendations or options to the City Council for action;

(4) A meeting of the Conference Committee shall occur prior to final adoption of both the operating and enterprise budgets;

(5) The Conference Committee on the Budget shall be chaired by one of the Council-designated members.

('74 Code, §1-8-8) (Ord. 3-1992; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001)

§ 2-11-12 APPROVAL CONSTITUTES PROPOSAL AS BUDGET; EXPENDITURES MUST BE AUTHORIZED.

(A) The annual operating budget appropriation resolution, as approved, in addition to other approved appropriations for operating purposes shall constitute the city's operating budget for the ensuing fiscal year. The city shall not expend any public funds, except for capital project expenditures, special assessment district expenditures, and trust and agency fund expenditures, unless the expenditure is authorized in the budget and is made or encumbered in the fiscal year covered by the budget.

(B) The amount encumbered but not expended at the end of this fiscal year is appropriated to the subsequent fiscal year without further action by the Council. A report of the amounts and individual purchase orders will be reported to the Council by October 1.

('74 Code, § 1-8-9) (Ord. 64-1974; Am. Ord. 55-1979; Am. Ord. 51-1990; Am. Ord. 3-1992; Am. Ord. 35-1994; Am. Ord. 40-1995)

§ 2-11-13 COUNCIL COMMITTEE OF THE WHOLE.

The City Council shall meet as a Committee of the Whole to hold public hearings for the following purposes:

- (A) Review and adopt five-year goals and one- year objectives.
- (B) Conduct program reviews of city operations or departments.
- (C) Review the cleanup of the annual operating budget.
- (D) Review the midyear report for the current fiscal year and the midyear budget appropriation resolution.
- (E) Review all components of the Mayor's proposed annual operating budget.

(Ord. 35-1994; Am. Ord. 40-1995)

§ 2-11-14 FISCAL YEAR.

The fiscal year of the city begins on July 1 of each calendar year and ends on June 30 of the following calendar year.

('74 Code, § 1-8-10) (Ord. 64-1974; Am. Ord. 3-1992; Am. Ord. 35-1994; Am. Ord. 40-1995)

§ 2-11-15 BUDGET AMENDMENTS BY COUNCIL DURING FISCAL YEAR.

Upon its own initiative or upon a recommendation by the Mayor, the Council may amend the budget during the fiscal year to which it applies. No amendment to the budget shall be made without a public hearing prior to the meeting at which action is taken on the proposed amendment. Amendments to the budget effect the pertinent fiscal year's Performance Plan, which effect shall be estimated by Administration staff and incorporated into the Plan. No amendment to the budget shall result in total authorized expenditures that exceed resources to be available for the fiscal year to which the budget is applicable.

('74 Code, § 1-8-11) (Ord. 64-1974; Am. Ord. 17-1975; Am. Ord. 3-1992; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001)

§ 2-11-16 TRANSFER OF FUNDS AND EXPENDITURE AUTHORITY WITHIN BUDGET.

(A) (1) During the fiscal year, the Mayor is authorized to transfer funds or change expenditure authority within and among line-item authority, as established by the annual appropriation resolution and other approved appropriations for operating purposes, if the transfer or change does not result in the increase or decrease in that line-item expenditure authority in excess of the cumulative amount of \$100,000 or 5% of the line-item authority, whichever is lower.

(2) ***LINE-ITEM AUTHORITY*** refers to the line in the budget appropriation resolution approved by the Council. The lines of the budget appropriation resolution shall include the title and cost of each program of the city's operating budget. The transfer of funds or change in expenditure authority "among" line-item authority refers to such transfers or changes between lines in the budget appropriation resolution which contain dollar amounts. The transfer of funds or change in expenditure authority "within" line-item authority shall be defined as transfers or changes between budget activities within programs in instances where the budget of an activity is \$500,000 or more. A decrease in line-item expenditure authority means preventing resources appropriated by Council to a budget program or allocated to an activity as specified above from being spent. ***RESERVED APPROPRIATIONS***, and other similar techniques, are reductions in expenditure authority.

(3) No actions are authorized which would result in exceeding the total expenditures authorized in the operating budget for the city government as a whole. Actions taken by the Mayor under this division (A) shall be reported in detail to the City Council within ten days of the approval of transfer or change by the Mayor or his designated representative.

(B) The transfer of funds or changes in expenditure authority in the operation budget, other than those authorized by division (A) of this section, may be made only by amendment of the budget by the City Council under § [2-11-15](#). No new program not already authorized in the budget shall be implemented by actions authorized under division (A) of this section, nor shall any existing program authorized in the budget be terminated by such actions.

(C) The Mayor shall provide a written report on all reorganization plans with an annual budgetary impact in excess of a cumulative amount of \$100,000 or 5% of the line-item authority, whichever is lower. The report shall provide justification for the reorganization which contains its rationale, financial and service benefits, the method for determining these benefits, a work plan for the newly reorganized unit, and an organization chart of the affected department or departments showing the results of the proposed reorganization. The Mayor also shall specify the affected positions and appropriations. Such report shall be provided prior to any necessary approval by Council.

('74 Code, § 1-8-12) (Ord. 64-1974; Am. Ord. 19-1991; Am. Ord. 3-1992; Am. Ord. 6-1992; Am. Ord. 35-1994; Am. Ord. 40-1995)

§ 2-11-17 APPLICATION FOR FEDERAL AND STATE GRANTS; BUDGETING FEDERAL FUNDS.

(A) Any application or proposal for a federal or state grant shall be submitted to the City Council for review and approval prior to the submittal of such application or proposal to any federal or state agency; provided, however, that these requirements shall not apply to those grants fulfilling any of the exceptions listed below:

(1) If any application or proposal is required by the federal or state agency prior to the next regular meeting of the Council, it may be submitted prior to approval by the Council subject to subsequent approval. The application shall be submitted to the Council for approval at its next regular meeting. If the application or proposal should be disapproved by the Council, it shall be withdrawn.

(2) If the application or proposal is for a federal or state grant amounting to less than \$1,500 and the required matching funds have previously been budgeted, Council approval is not required.

(3) Applications or proposals for any federal or state grant amounting to less than \$1,500 and requiring only an in-kind match and having no future financial implications for the city as determined by the Chief Administrative Officer shall not require Council approval.

(4) Applications or proposals for federal or state grants amounting to less than \$1,500 and requiring no matching city funds and having no future financial implications for the city as determined by the Chief Administrative Officer shall not require Council approval.

(B) If, after Council approval of the application, conditions are added to the grant award which have not been approved by the Council and which have major financial or policy implications for the city, the final grant agreement shall be submitted to the Council for approval in accordance with the following procedures:

(1) The Council may approve, take no action, disapprove the proposed agreement, or recommend revisions thereof with or without conditioning approval on the adoption of such revisions.

(2) If no action is taken by the Council within 21 days from the date of the Council meeting which immediately follows receipt of the proposed agreement in the Council offices, the Mayor may proceed to execute and deliver the agreement and to effectuate its provisions.

(3) If the Council disapproves by majority vote of the members present and voting, the agreement may not be entered into.

(4) The Mayor may withdraw the proposed agreement at any time from the Council and may present revisions thereof. In the event of withdrawal, the proposed agreement shall be a nullity. In the event of revision, the provisions set forth in divisions (A) and (B) of this section shall apply to the same extent as if a new proposal were being made.

(C) The Mayor is authorized to expend, without further authorization from the City Council, any federal or state funds awarded as a result of a federal or state grant application if such grant does not require the city's commitment of funds or resources which were approved by the City Council to be increased by more than 10%, and if the goals, objectives and proposed programs included in the application approved by the Council have not changed. If such changes occur, and the Mayor desires to accept the grant, the grant application shall be resubmitted to the City Council.

(D) The Mayor, upon receiving notification that the city has been awarded a federal or state grant, shall report the details of the grant award to the City Council quarterly.

('74 Code, § 1-8-13) (Ord. 17-1975; Am. Ord. 87-1978; Am. Ord. 13-1980; Am. Ord. 3-1992; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001)

§ 2-11-18 FINANCIAL AND MANAGEMENT REPORTS.

(A) The Mayor shall submit on a quarterly basis summary financial and management status reports of all operating funds to the City Council. These reports shall include:

- (1) Current annual revenue estimates for each fund;
- (2) Brief analysis explaining revenue trends for each fund;
- (3) A midyear programmatic review of each program and department and the progress made year- to-date in achieving its goals and objectives.

(B) The Office of Internal Audit and Investigations shall submit summary financial status reports of all operating funds to the City Council, identifying funds, departments, and program strategies that are projected to exceed or underspend their appropriated budgets for that fiscal year by \$100,000 or five percent of the line item authority, whichever is lower. These reports shall be submitted for the second through fourth quarters of each fiscal year. This report shall include explanations provided by the Chief Administrative Officer identifying the cause of the over- or underspending and setting forth a plan to bring each item back into compliance with the adopted budget.

(C) Reports shall be received by the Council on a timely basis according to the following schedule:

- (1) The preliminary year-end report shall be received for introduction at the first City Council meeting in October following the close of the fiscal year;
- (2) The final year-end report shall be received for introduction at the first City Council meeting in December;
- (3) The midyear report shall be received for introduction at the first City Council meeting in February. The midyear report shall be accompanied by a midyear appropriation resolution for those programs that are projected to be overspent and which the Mayor determines that expenditure controls cannot bring the programs within the limits of administration expenditure authority as defined by §§ [2-7-1-1](#) et seq., the Administrative Code. Mid-year appropriation adjustments shall be proposed only when caused by unexpected circumstances such as a natural disaster, unforeseen shifts in the national economy, and other events that constitute an emergency. Except as otherwise provided, the Mayor and Council shall confine budget adjustments to the midyear resolution. The midyear report and midyear appropriation resolution shall be reviewed by the City Council at a minimum of one public hearing by a Committee of the Whole.

('74 Code, § 1-8-16) (Ord. 70-1977; Am. Ord. 18-1981; Am. Ord. 51-1990; Am. Ord. 3-1992; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001; Am. Ord. 1-2005; Am. Ord. 45-2006)

§ 2-11-19 BUDGET MODIFICATIONS IN FISCAL YEAR OUTSIDE ADOPTION OF ANNUAL BUDGET.

(A) The Mayor shall be responsible for identifying and proposing expenditure reductions or revenue enhancements to the operating budget of the city when it is determined, in the period between adoption of the annual operating budget [i.e., the fiscal year], that city revenues are not expected to equal city expenditures.

(B) When the Mayor engages in planned mid- fiscal year reductions of the annual operating budget in excess of \$250,000 cumulative for the fiscal year, the Mayor shall cooperate with the Council staff so that it may monitor this budget process and prepare analyses and other information required by the City Council. A representative of the Council shall be allowed to participate in all meetings and have access to all information related to the formulation of this budget reduction program.

(C) When the Mayor engages in a planned mid- fiscal year reduction of the annual operating budget in excess of \$250,000 cumulative in the fiscal year, this effort shall be consistent with Ordinance No. 51-1990. Any redirection or reclassification of appropriations into sequestered or reserved budget categories by the Mayor shall be considered a transfer of funds between budget line-items. Such transfers shall be subject to the regulations contained in § [2-11-16](#).

('74 Code, § 1-8-18) (Ord. 19-1991; Am. Ord. 3-1992; Am. Ord. 35-1994; Am. Ord. 40-1995)

ARTICLE 12: CAPITAL IMPROVEMENTS

Section

- [2-12-1](#) Capital improvements program intent; scope
- [2-12-2](#) Definitions
- [2-12-3](#) Adopting the capital improvements program; publication
- [2-12-4](#) City council participation
- [2-12-5](#) Amending the capital improvements program
- [2-12-6](#) Progress reports
- [2-12-7](#) Trails and bikeways set aside

§ 2-12-1 CAPITAL IMPROVEMENTS PROGRAM INTENT; SCOPE.

(A) The Capital Improvement Program (CIP) plan shall include, and take as a starting point, an inclusive perspective of all capital expenditures regardless of fund source (including,

but not limited to City, State, Federal funds, and private contributions-in-aid) including those expended by the City directly and those undertaken by other public agencies within the city limits that are related to the City's adopted goals. The City-funded public purposes capital improvements shall be considered as a component of this over-all perspective.

(B) The Capital Improvement Program shall be linked to the City's adopted Five Year Goals, Program Strategies, and to the Performance Plan of city departments.

(C) The Capital Improvement Program shall be consistent with and carry out the policies contained in the City/County Comprehensive Plan.

(D) The first priority of the City's Capital Improvement Program shall be to rehabilitate, replace, and maintain in good condition the capital assets of the City. Pursuant to this priority, facility plans shall be developed and maintained by all City departments, coordinated according to a common set of standards by the CIP office. These plans shall include the condition of the City's major capital assets and a program of necessary annual capital expenditures to restore, replace, and maintain the facilities, vehicles and equipment in good condition. These inventories and plans shall be completed by the 2003 CIP. The plan for streets and hydrology shall be based on the Planned Growth Strategy findings.

(E) City-funded public-purpose capital improvements are undertaken in order to implement the city's adopted goals and objectives: normally, these have been adopted in city plans for urban development and conservation. In order to maximize the effectiveness of capital improvements in advancing such goals and objectives in a coordinated manner, and in order to efficiently use public funds, the Mayor shall develop and submit to the Council a proposed Capital Improvements Program, which shall include all city-funded public-purpose capital projects proposed to be built within ten years. The program shall include but is not limited to all projects financed by general obligation bonds, revenue bonds, Urban Enhancement Fund monies, Tax Increment Fund monies, Consolidated Plan monies, tax and rate revenues, Federal and State grants, metropolitan redevelopment bonds and special assessment districts. Projects built with industrial development bonds are not normally included.

(F) The proposed Capital Improvements Program shall consist of a ten-year plan of capital expenditures, including a more detailed two-year Capital Improvements Budget. The proposed Capital Improvements Program shall include a listing of projects in order of priority and proposed year of construction or acquisition. Data on each project shall include:

- (1) The anticipated capital cost of each project;
- (2) The anticipated source of capital funds for each project;
- (3) The estimated annual operating cost or savings for each project;
- (4) The estimated completion date of each project;
- (5) The adopted plan or policy, if any, which each project would help to implement;

(6) The viable alternatives that were considered for each project and the reasons the proposed project is the most cost-effective and practical alternative for meeting the stated objective;

(7) The project's ranking in whatever sequencing/priority-setting system is used as a basis for proposed programming; and

(8) The impacts of proposed capital improvements on user rates (for enterprise fund projects); and

(9) The percentage allocations of each project as "growth", "rehabilitation", "deficiency", and "mandate", which categories are defined in Bill No. F/S R-37 (Enactment 118-2000), establishing priorities for the 2001 Capital Improvement Plan; and

(10) The capital projects of the enterprise funds shall be evaluated by the Capital Improvements Program staff in a similar manner as those for the General Fund.

(G) All assets included in projects to be funded in part or in total from proceeds of general obligation bond issues or revenue bond issues shall have a minimum service life expectancy at least equal to the term of the relevant bond issue.

(H) All CIP project items with a two year programmed amount in the General Fund and a one year programmed amount in the Enterprise Funds of \$100,000 or more shall be included in the CIP bill as a separate line item.

(I) Separate bond issues shall be sold to fund vehicles and equipment, the term of which bonds shall not exceed five years.

(J) Three percent of the CIP for the general fund in the 2007, 2009 and 2011 bond elections shall be reserved to fund the design, installation, purchase, user training and monitoring of Energy Conservation and/or Renewable Energy that reduce fossil fuel based energy costs for General Fund and Enterprise Fund Programs that will demonstrably reduce energy consumption. This fund shall be known as the 3% for Energy Conservation and Renewable Energy Set-A-Side for Capital Improvements. The Planning for the fund shall be consistent with the requirements set forth in Article 2-12 ROA 1994.

(K) The Department of Finance and Administrative Services will budget 3% of the General Obligation Bond Program for the 3% for Energy Conservation and Renewable Energy Set-A-Side for Capital Improvements.

(L) Departmental applications for the 3% for the Energy Conservation and Renewable Energy Set-A-Side for Capital Improvements shall be submitted to the Facility, Energy & Security Management Division. A committee of City fiscal and technical staff shall approve selected projects based on established criteria. The committee may consult with subject matter

experts outside of the City Government in the selection of projects. Criteria shall include but are not limited to:

(1) The capital expenses of a project should be regained from energy savings generated from the project within the expected life of the equipment, and projects using renewable energy shall have a lower life cycle cost than a project using conventional energy based on the projected cost per unit by year for an energy resource as published in the United States Department of Energy, Energy Information Administration, Annual Energy Outlook Report or other sources identified by the committee. Preference shall be given to alternatives that meet the energy cost criteria.

(2) If a proposal is for construction or installation, the scope of the project shall only be for Energy Conservation and/or Renewable Energy in existing facilities.

(3) The monetary amount allocated to any one project shall not exceed 40% of the funding allocated to the 3% Energy Conservation and Renewable Energy Set-A-Side, during any one bond cycle unless approved by the City Council.

(4) The project shall be consistent with the requirements set forth in Paragraph (D) of this Section.

('74 Code, § 1-10-1) (Ord. 34-1975; Am. Ord. 8-1986; Am. Ord. 56-1988; Am. Ord. 23-1992; Am. Ord. 16-2001; Am. Ord. 52-2002; Am. Ord. 9-2005; Am. Ord. 35-2006)

§ 2-12-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BEST ENERGY PRACTICES. Management of energy production and consumption to reduce energy use and costs, implement renewable energy, promote clean energy sources and the efficiency and maintenance of the city's energy infrastructure.

ENERGY CONSERVATION. Building materials, equipment and machinery and supplies that reduce energy costs for Enterprise and General Fund Programs by demonstrably reducing energy consumption or by furthering the implementation of renewable energy sources.

RENEWABLE ENERGY. Any energy resource that is naturally regenerated over a short time scale and is generated by use of low- or zero-emissions technology with substantial long-term production potential or generated by renewable energy sources that may include (1) solar, wind, hydropower and geothermal resources; (2) fuel cells that are not fossil fueled; and (3) biomass resources, such as agricultural or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation, landfill gas and anaerobically digested waste biomass and new technologies as they emerge. ***RENEWABLE ENERGY*** does not include electric energy generated by use of fossil fuel, waste products from fossil sources or nuclear energy.

(Ord. 35-2006)

§ 2-12-3 ADOPTING THE CAPITAL IMPROVEMENTS PROGRAM; PUBLICATION.

(A) The Mayor shall submit by November 21 of each even-numbered year, except as provided by division (C) of this section, the proposed Capital Improvements Program to the Environmental Planning Commission. The Environmental Planning Commission shall conduct at least one public hearing on responsibilities of the Commission for plans and policies on development and on protection of the environment as delineated in §§ [14-13-3-1](#) et seq. The Environmental Planning Commission shall submit its recommendations on the proposed program to the Mayor by December 1 of each even-numbered year. The Mayor is not required to revise the proposed Capital Improvements Program to incorporate the recommendations of the Environmental Planning Commission but may do so.

(B) The Mayor shall submit the proposed Capital Improvements Program, including any recommendations of the Environmental Planning Commission, to the Council by January 3 of each odd-numbered year, except as provided by division (C) of this section.

(C) The Capital Improvements Programs for the Air Quality, Aviation Enterprise, Parking Enterprise, Refuse Disposal, and Golf Enterprise Funds shall be developed in accordance with the following procedure:

(1) The capital improvements appropriations for the above referenced funds shall be developed by the Mayor in conjunction with operating budgets and supporting rate proposals, if any, and shall be submitted to the Council no later than April 1 of each year.

(2) The Mayor shall submit to the Council any proposed rate increases required for the proposed Capital Improvements Programs of the above referenced funds along with the operating budget no later than April 1st of each year. These Capital Improvement Program budgets shall be fully integrated into the proposed ten year program by the CIP Office.

(D) The Council shall approve the Capital Improvements Program as proposed or shall amend and approve it. Council action shall be within 60 days after it has been submitted by the Mayor. This period begins on the date of introduction of the CIP bill at a City Council meeting. The Council shall hold at least one public hearing on the proposed program.

(E) The city shall promptly publish the Capital Improvements Program as approved.

('74 Code, § 1-10-2) (Ord. 34-1975; Am. Ord. 8-1986; Am. Ord. 56-1988; Am. Ord. 35-1994; Am. Ord. 40-1995; Am. Ord. 16-2001; Am. Ord. 9-2005; Am. Ord. 35-2006; Am. Ord. 5-2007)

§ 2-12-4 CITY COUNCIL PARTICIPATION.

(A) Prior to January 31 of even-numbered years, the City Council shall adopt a resolution providing policy guidelines for the upcoming Capital Improvements Program. Should the Council fail to provide policy guidelines by the end of January, the Mayor's guidelines shall direct the development of the Capital Improvements Program.

(B) During the preparation of the proposed Capital Improvements Program by the Mayor, he shall furnish any requested information on departmental requests to the staff of the City Council and shall cooperate with City Council staff so that it may monitor the program development process and prepare preliminary analyses and other information for the City Council.

(C) A representative of the Council shall be allowed to attend the meetings during which the Mayor and CAO formally review the program recommendations by the CIP Review Group or other similar body.

(Ord. 26-1993; Am. Ord. 40-1995; Am. Ord. 16-2001; Am. Ord. 35-2006)

§ 2-12-5 AMENDING THE CAPITAL IMPROVEMENTS PROGRAM.

(A) When it appears to the Mayor that sound Capital Improvements Planning requires amending that part of the Capital Improvements Program which is included in the two-year Capital Improvements Budget before presentation of a new program is due, he may change the amount designated for a specific project without Council approval under any of the following circumstances. For purposes of this section, a "project" is defined as a capital-related activity for which there is a specific and unique Council appropriation.

(1) The change does not significantly alter the project's scope and the total change:

(a) Does not exceed 20% of the amount appropriated for that project in the Capital Improvements Program as approved if the appropriated amount for the project is less than one million dollars, and

(b) Does not exceed 10% of the amount appropriated for that project in the Capital Improvements Program as approved if the appropriated amount for the project is between one million dollars and five million dollars, and

(c) If the amount appropriated for the project is greater than five million dollars or the total increase or reduction will exceed the applicable percentage in subsections a and b herein of the amount designated for that project in the Capital Improvements Program, the Mayor shall submit his proposed change to the Council for approval.

(2) The change combines parallel projects, usually in succeeding bonding years, and does not change the nature of any project involved in the combination. The Mayor shall notify the Council of the change in writing at the next regularly scheduled Council meeting after the change takes place.

(3) The change combines all or parts of several projects into an approved or new project and does not change the nature of any project involved in the combination. The Mayor shall notify the Council of the change in writing at the next regularly scheduled Council meeting after the change takes place.

(B) When it appears to the Mayor that sound Capital Improvements Planning requires amending that part of the Capital Improvements Program which is included in the two-year Capital Improvements Budget before presentation of a new program is due, and the Mayor is not permitted to make the change under the terms of division (A) of this section, he shall act as follows:

(1) Before submitting an amendment to the Council the Mayor shall submit it to the Environmental Planning Commission for its evaluation; this need not involve a public hearing. However, this evaluation by the Environmental Planning Commission is not required in the following situations:

(a) The project is not contrary to adopted city plans, and would not significantly affect city public utility systems, neighborhood land use, transportation, or the environment; or

(b) The Environmental Planning Commission could not or does not provide an evaluation within the time that the Mayor feels is available in order for the city to respond to the special opportunity or need.

(2) The Mayor shall submit to the Council for approval his proposed amendment, including any recommendations of the Environmental Planning Commission, according to the following schedule:

(a) In March, he shall submit amendments to the Council.

(b) In October, he shall submit amendments to the Council which could not be foreseen when either the previous Capital Improvements Program or the previous March's amendments were presented to the Council, and in addition he finds that the amendments cannot prudently be delayed until the next Capital Improvements Program or March amendments.

(c) At other times, he shall submit amendments only in unforeseen emergency or opportunity situations which cannot prudently be delayed until the following regularly scheduled submissions of changes.

(C) Unless an amendment falls within division (A) or (B) above, the Capital Improvements Program shall not be amended until the next Capital Improvements Program is adopted.

(D) In no case shall funds be designated or transferred under the provisions of this section without said funds having been previously appropriated by the City Council, either to a project or to the contingency activity within the respective purpose.

('74 Code, § 1-10-6) (Ord. 76-1975; Am. Ord. 47-1981; Am. Ord. 12-1983; Am. Ord. 84-1985; Am. Ord. 40-1995; Am. Ord. 52-1999; Am. Ord. 16-2001; Am. Ord. 35-2006)

§ 2-12-6 PROGRESS REPORTS.

The Mayor shall submit a status report to the Council summarizing the implementation of each Capital Improvements Program at annual intervals until all projects in the approved Capital Improvements Program are completed. The annual report shall be submitted by the first Council meeting in September of each year.

(A) The annual report shall contain the following information for each current project in the Capital Improvements Program: (These requirements shall be included first in the September 2002 annual report.)

- (1) Project name.
- (2) Total estimate project cost.
- (3) Total funding appropriated to project and also itemized as to source.
- (4) Status, e.g. feasibility study completed, design completed, date construction began or is anticipated to begin.
- (5) Estimated completion date of project.

(B) The status report shall also list every change made pursuant to § [2-12-5](#) and shall include the following information about each change:

- (1) The specific project that was changed;
- (2) The total amount originally approved by the Council for the project;
- (3) The amount of the increase or decrease that was authorized without prior Council approval;
- (4) The reason(s) for the change; and
- (5) If the amount designated for a project was increased, the account(s) and project(s) from which the funds were transferred, or if the amount designated for a project was decreased, the account(s) and project(s) to which the funds were transferred.
- (6) If a change combines all or parts of projects, the individual account(s) and project(s) which were combined and the amount of funds involved from each.

('74 Code, § 1-10-7) (Ord. 12-1983; Am. Ord. 11-1991; Am. Ord. 52-1999; Am. Ord. 16-2001; Am. Ord. 35-2006)

§ 2-12-7 TRAILS AND BIKEWAYS SET ASIDE.

An amount not less than five percent of funding for the Public Works - Street purpose of the Public Works Department in the Capital Improvement Program shall be dedicated to trails and

bikeways. The projects funded through this set aside shall be consistent with the adopted 1993 Rank II *Trails and Bikeways Facility Plan* or any subsequent updates to the plan. The funds shall be administered by the Capital Improvements Division of the Office of Management and Budget. A memorandum of understanding shall be developed between the Public Works Department, the Parks and Recreation Department, and the Planning Department for the purpose of administering the funds. The trails and bikeways set aside shall not be used as a justification to decrease funding for this purpose from other sources.

(Ord. 20-1994; Am. Ord. 16-2001; Am. Ord. 35-2006)

ARTICLE 13: COMPETITIVE ELECTRIC POWER

Section

- [2-13-1](#) Authority
- [2-13-2](#) Short title
- [2-13-3](#) Purpose
- [2-13-4](#) Albuquerque electric utility
- [2-13-5](#) Powers and duties of the AEU
- [2-13-6](#) Regulations and amendments

Cross-reference:

[Electricity franchise, see §§ 13-4-2-1 et seq.](#)

§ 2-13-1 AUTHORITY.

The City Council, pursuant to Section 3-24-1 NMSA 1978, Article XV of the City Charter adopted June 29, 1921, and Article X, § 6 of the Constitution of New Mexico enacts this article relating to the establishment of an electric public utility as authorized by such sections.

('74 Code, § 1-22-1) (Ord. 60-1990)

§ 2-13-2 SHORT TITLE.

This article shall be known and may be cited as the "Albuquerque Competitive Electric Power Ordinance."

('74 Code, § 1-22-2) (Ord. 60-1990)

§ 2-13-3 PURPOSE.

The purpose of this article is to provide for the efficient delivery of reliable electric power service to the public or to wholesalers at the lowest cost and, where feasible, at a competitively determined price.

('74 Code, § 1-22-3) (Ord. 60-1990)

§ 2-13-4 ALBUQUERQUE ELECTRIC UTILITY.

There shall be an Albuquerque Electric Utility, hereinafter "AEU," which shall be responsible for the planning, development, production, purchase, sale, transmission and distribution of electricity and related services by the city.

('74 Code, § 1-22-4) (Ord. 60-1990)

§ 2-13-5 POWERS AND DUTIES OF THE AEU.

(A) *Property and contracts.* The AEU may:

- (1) Sell its products and services to public and private corporations and to other consumers;
- (2) Construct and operate generating plants, transmission, distribution, and other facilities;
- (3) Set rates and service policies and regulations;
- (4) Purchase real property and personal property; and
- (5) Enter into contracts, leases, and agreements in furtherance of its powers and duties.

(B) *Extensions of services.* The AEU may adopt regulations governing extensions of services of the AEU. The regulations shall provide the conditions under which the extensions shall be made to render them compensatory and shall provide that each extension project shall, when completed, become the property of the city whether on public or private property. The AEU may provide for refunds where advances by the person benefitted are necessary to make extensions compensatory.

(C) *Joint operations with others.* The AEU may enter into contracts and agreements with any public or private corporation or any individual, both inside and outside the boundaries of the city and state:

- (1) For the joint use of property belonging either to the AEU or to the other contracting party or jointly to both parties;
- (2) For the joint acquisition of real and personal property, rights and franchises and the joint financing, construction, and operation of plants, buildings, transmission, distribution, and other facilities; or

(3) For the operation and management of the electric system of AEU or any part thereof.

(D) *Eminent domain.* The AEU may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain as provided by law when the AEU determines that public necessity or convenience requires such action.

(E) *Use of thoroughfares and easements for utility installations.* The AEU may use the ground over, under, or along any road, railway, highway, street, sidewalk, thoroughfare, alley, or waterway in the operations of the AEU including the easements granted by Section 3-24-4 NMSA 1978 but shall in all cases, subject to the applicable general regulations of the city, cause the surface of the public way to be restored to its usual condition.

(F) *Bond issues and other indebtedness.* Subject to applicable state laws, the AEU may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, improvement, and extension of the utility facilities owned by the AEU, including facilities owned or operated jointly with others.

(G) *Public information expenditures.* The AEU may authorize reasonable expenditures to inform the public of the policies, operations, programs and plans of the AEU.

(H) *Existing obligations.* Contracts and obligations relating to the utility systems of the city incurred prior to the effective date of this charter shall not be impaired and shall be binding upon the AEU insofar as they apply to the AEU.

('74 Code, § 1-22-5) (Ord. 60-1990)

§ 2-13-6 REGULATIONS AND AMENDMENTS.

(A) The city may amend any provision of this article and may adopt the regulations it finds necessary in the exercise of the police power as adjunct to or in corollary with the regulations.

(B) The city may amend this article when necessary to enable the AEU to pursue developments in the electric supply market which will afford the opportunity to provide more efficient and economical services.

('74 Code, § 1-22-6) (Ord. 60-1990)

ARTICLE 14: ECONOMIC DEVELOPMENT

Section

Part 1: Local Economic Development Act Plan

- [2-14-1-1](#) Short title
- [2-14-1-2](#) Purpose
- [2-14-1-3](#) Definitions
- [2-14-1-4](#) Economic development plan
- [2-14-1-5](#) Local Economic Development Act Plan Review Committee
- [2-14-1-6](#) Application requirements
- [2-14-1-7](#) Application review process
- [2-14-1-8](#) Application review criteria
- [2-14-1-9](#) Public safeguards
- [2-14-1-10](#) Project participation agreement
- [2-14-1-11](#) Project monies
- [2-14-1-12](#) Termination
- [2-14-1-13](#) Joint or regional projects

Part 2: Community Development Incentive

- [2-14-2-1](#) Findings
- [2-14-2-2](#) Short title
- [2-14-2-3](#) Purpose
- [2-14-2-4](#) Definitions
- [2-14-2-5](#) General policies
- [2-14-2-6](#) Pre-application discussion with staff

[2-14-2-7](#) Content of application

[2-14-2-8](#) Application procedures

[2-14-2-9](#) Community development incentives

PART 1: LOCAL ECONOMIC DEVELOPMENT ACT PLAN

§ 2-14-1-1 SHORT TITLE.

This article may be cited as the "Local Economic Development Act Plan Ordinance."

(Ord. 33-2004)

§ 2-14-1-2 PURPOSE.

Sections [2-14-1-1](#) et seq. are adopted as part of the city's economic development plan. In accordance with Sections 5-10-1 et seq. NMSA 1978 (the "Local Economic Development Act"), the purpose of the Economic Development Plan Ordinance is to allow public support of economic development projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of §§ [2-14-1-1](#) et seq. is to allow the city to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects. Sections [2-14-1-1](#) et seq. are not intended to restrict projects or assistance otherwise allowed by law.

(Ord. 33-2004)

§ 2-14-1-3 DEFINITIONS.

The following definitions apply to the Economic Development Plan Ordinance:

ECONOMIC DEVELOPMENT PROJECT. The provision of direct or indirect assistance pursuant to the Local Economic Development Act to a qualifying business and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.

PROJECT PARTICIPATION AGREEMENT. An agreement between a qualifying entity and the city whereby the city provides assistance to an economic development project in exchange for the benefits received as set forth in §§ [2-14-1-1](#) et seq.

QUALIFYING ENTITY. A corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:

(1) An industry for the manufacturing, processing, or assembling of any agricultural or manufactured products;

(2) A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities, except as provided by subsection (5) of this definition;

(3) A business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in subsection (5) of this definition, not including businesses primarily engaged in the sale of goods or commodities at retail;

(4) An Indian tribe or pueblo or a federally chartered tribal corporation;

(5) A telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;

(6) A facility for the direct sales by growers of agricultural products, commonly known as farmer's markets; or

(7) A business that is the developer of a metropolitan redevelopment project.

(Ord. 33-2004)

§ 2-14-1-4 ECONOMIC DEVELOPMENT PLAN.

(A) The Council may assist economic development projects in any legally permissible manner including but not limited to provision of land, buildings and infrastructure provided that all the requirements of §§ [2-14-1-1](#) et seq. are met. The city may provide land, buildings or infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project. The city at its discretion may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The city, at its discretion, may also contribute to the payment of costs for professional services contracts such as industry feasibility studies and planning and design services needed to implement a project.

(B) The Council may consider offering all forms of assistance allowed under this section and any other legally permissible forms of assistance; however, this does not establish any obligation on the city's part to offer any specific type or level of assistance.

(Ord. 33-2004)

§ 2-14-1-5 LOCAL ECONOMIC DEVELOPMENT ACT PLAN REVIEW COMMITTEE.

The Albuquerque Development Commission is hereby established as the Local Economic Development Act Plan Review Committee and shall be responsible for reviewing and making

recommendations to the Council on applications for assistance for Local Economic Development Act projects.

(Ord. 33-2004)

§ 2-14-1-6 APPLICATION REQUIREMENTS.

(A) Any qualifying entity meeting the definition set forth in §§ [2-14-1-1](#) et seq. may propose a Local Economic Development Act project to the city. No obligation on the part of the city is created by an applicant meeting the definition of a qualifying entity.

(B) Applications from qualifying entities shall be submitted to the Office of Economic Development on forms provided by the city.

(C) An application shall, at a minimum, contain the following:

(1) A description of the project, including the nature of the business, a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the facility and whether the facility is locally owned or operated;

(2) The number and type of new jobs to be created and a detailed description of the benefits provided;

(3) With regard to job characteristics, the number of jobs that benefit low and moderate income residents, whether the jobs meet or exceed median wages for the industry within the community, the percentage of jobs filled by current residents versus relocated individuals, whether the wages of all positions created are sufficient to eliminate the need for public assistance, whether the applicant will train new employees to fill the positions, advancement opportunities, and whether the applicant will use "in-plant" or other job training incentive programs;

(4) The present use or condition of the project and any new infrastructure needs including possible cost sharing arrangements;

(5) The present assessed value of the project property site, if available;

(6) A proposed project schedule for the acquisition and installation of the project, including the expected date(s) the project will be brought into service;

(7) The total dollar amount of the project and financing arrangements;

(8) Information relating to the feasibility of the project including information relating to the ability of the facility to generate revenues to render the facility self-liquidating;

(9) The competition in the type of commerce or industry already existing within the city;

- (10) A proposed construction schedule for the project;
- (11) Information regarding compliance with city planning and zoning policies and compliance with all federal, state, and local environmental laws, regulations and rules;
- (12) The effect on existing industry and commerce in the city including during and after the construction period, including the number of local construction jobs created;
- (13) Information about the project design, including conceptual site plans and the impacts on the neighborhood such as area enhancement and positive contribution to the neighborhood;
- (14) Information about the applicant's good corporate citizenship, both in terms of promoting donations and volunteerism, its willingness to commit to make local purchases, water use and water conservation practices, and whether facility emissions and/or waste is controlled and the facility has a satisfactory plan for reduction/disposal;
- (15) Resumes showing the experience of the applicant/business facility, and the experience of the architect, contractor and leasing agent, if relevant;
- (16) A statement of plans for project management; and
- (17) Such other information as the city may reasonably require after initial review of the application, including but not limited to preliminary legal opinions, further information regarding the relationship of the application to the city's development objectives, additional proof of financial capability, business references, term sheets for financing and financial commitment letters.

(Ord. 33-2004)

§ 2-14-1-7 APPLICATION REVIEW PROCESS.

(A) Economic development staff and such other city staff as are necessary and appropriate shall review the application and advise the Albuquerque Development Commission if the entity and the proposed project meet the definitions of this section and the policies and objectives of the city's economic development plan. The city may at its discretion engage independent consultants to assist in the review of applications. The city may require the applicant to pay for all or a portion of the cost of engaging the consultants.

(B) The economic development staff shall determine whether the entity and the proposed project qualify under this section.

(C) City staff shall then coordinate with the qualifying entity to develop a project participation agreement as set forth in §§ [2-14-1-1](#) et seq.

(D) The Albuquerque Development Commission shall consider the economic development project and the project participation agreement at a public meeting in accordance with the criteria set forth in §§ [2-14-1-1](#) et seq. The Commission shall recommend to the Council that the proposal be adopted, conditionally adopted or not adopted.

(E) The recommendation will be forwarded with the project participation agreement, minutes of the Albuquerque Development Commission meeting and any other pertinent information to the Council for final consideration at a public hearing.

(Ord. 33-2004)

§ 2-14-1-8 APPLICATION REVIEW CRITERIA.

(A) Applications for Local Economic Development Act projects requesting economic assistance from the city which meet the policies and objectives of the city's community economic development plan shall receive priority. Examples include, but are not limited to:

(1) Organizations which assist business start-ups or bring small companies together to increase their competitive abilities. This must involve a tangible project which will create jobs and promote an industry. Examples include, but are not limited to:

(a) Business incubators;

(b) Art incubators or coalitions (e.g., a performing arts coalition seeking to construct rehearsal or performance facilities);

(c) Public markets for farmers, gardeners, crafts, etc.; and

(d) Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs;

(2) Private companies seeking to build, expand or relocate facilities;

(3) Private companies which provide facilities or services which enhance the ability of Albuquerque businesses to operate;

(4) Manufacturing firms (including intellectual property such as computer software);

(5) Projects which enhance the exporting capacity of companies and/or provide goods and services which currently have to be imported into Albuquerque;

(6) Projects in industry clusters listed above are particularly encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and

(7) Qualifying entities with existing contracts or projects with the city when this plan is adopted may propose a restructuring of their project as an economic development project.

(B) All applications for Local Economic Development Act projects requesting economic assistance from the city shall include a cost-benefit analysis. The cost of preparation of the cost-benefit analysis shall be the responsibility of the applicant. The city retains the right to specify a format and methodology for the cost-benefit analysis. City staff shall review and approve of the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the city will recoup the value of its donation within a period of ten years. The analysis shall address the following:

- (1) The number and types of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job category);
- (2) Pay scales of jobs;
- (3) Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Albuquerque area;
- (4) Total payroll expected at start-up and after one year;
- (5) Anticipated impact of project on local tax base; and,
- (6) If practicable, anticipated impact on local school system.

(C) All applications for Local Economic Development Act projects requesting economic assistance from the city shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of the proposed project. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for Albuquerque area residents. Cultural impacts of projects shall also be considered.

(D) Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for its employees.

(E) All applications for economic development projects requesting economic assistance from the city shall clearly demonstrate the benefits which will accrue to the community as a result of the donation of public resources. The city has considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities which enhance a targeted industry cluster or addressing critical deficiencies in the regional economy may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this section to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impacts of a proposal.

(F) All applications for economic development projects requesting economic assistance from the city shall clearly demonstrate how the qualifying entity is making a substantive contribution to the community. The city retains flexibility in defining the "substantive contribution to the community." Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.

(Ord. 33-2004)

§ 2-14-1-9 PUBLIC SAFEGUARDS.

(A) All Local Economic Development Act projects receiving assistance from the city shall be subject to an annual performance review conducted by city staff. This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement. This review shall be presented to the Council. The Council at a public hearing may terminate assistance to the Local Economic Development Act project by passage of an ordinance which terminates the agreement and specifies the disposition of all assets and obligations of the project as set forth in the termination section of §§ [2-14-1-1](#) et seq.

(B) The city shall retain a security interest which shall be specified in the project participation agreement. The type of security given shall depend upon the nature of the Local Economic Development Act project and assistance provided by the city. Types of security may include, but are not limited to:

- (1) Letter of credit in the city's name;
- (2) Performance bond equal to the city's contribution;
- (3) A mortgage or lien on property or equipment;
- (4) Pro-rated reimbursement of donation if the qualifying entity reduces its work force or leaves the community before the agreed term expires; and
- (5) Other security agreeable to both parties.

(C) Should a qualifying entity move, sell, lease or transfer a majority interest in the Local Economic Development Act project before the expiration of project participation agreement, the city retains the right to deny any and all assignments, sales, leases or transfers of any interests in the Local Economic Development Act project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of the agreement will be satisfied by the transferee, assignee or lessee. At its discretion, the city may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the city may reclaim the facility and enter into an agreement with a new qualifying entity.

(D) Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of ten years from the date the ordinance adopting the project participation agreement is passed by the Council.

(Ord. 33-2004)

§ 2-14-1-10 PROJECT PARTICIPATION AGREEMENT.

(A) The qualifying entity shall prepare with the city a project participation agreement. This agreement is the formal document which states the contributions and obligations of all parties in

the Local Economic Development Act project. The agreement must clearly state the following items:

- (1) The economic development goals of the project;
- (2) The contributions of the city and the qualifying entity;
- (3) The specific measurable objectives upon which the performance review will be based;
- (4) A schedule for project development and goal attainment;
- (5) The security being offered for the city's investment;
- (6) The procedures by which a project may be terminated and the city's investment recovered; and
- (7) The time period for which the city shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the city shall relinquish interest in and oversight of the project.

(B) Each project participation agreement shall be adopted as an ordinance and adopted by the Council at a public hearing.

(Ord. 33-2004)

§ 2-14-1-11 PROJECT MONIES.

All project monies shall be kept in separate accounts by the qualifying entity and the city, with such accounts clearly identified. These accounts shall be subject to an annual independent audit.

(Ord. 33-2004)

§ 2-14-1-12 TERMINATION.

The Council may repeal §§ [2-14-1-1](#) et seq. and terminate the city's community economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement is repealed or terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of the ordinance or any project participation agreement, any city monies remaining in city project accounts shall be transferred to the city's general fund.

(Ord. 33-2004)

§ 2-14-1-13 JOINT OR REGIONAL PROJECTS.

The city may engage in Local Economic Development Act projects involving one or more other governmental entities for projects which encompass more than one municipality or county. In such instances, a joint powers agreement shall be adopted by the relevant governing bodies. This agreement will establish the application criteria and the terms of all project participation agreements. Criteria established under a joint powers agreement shall be consistent with the provisions of this section.

(Ord. 33-2004)

PART 2: COMMUNITY DEVELOPMENT INCENTIVE

§ 2-14-2-1 FINDINGS.

The Council finds:

(A) The city desires to benefit from the Community Development Incentive Act, Sections 3-64-1 through 3-64-5 NMSA 1978, as amended (the “Act”), enacted by the New Mexico Legislature; and

(B) The Act provides, in pertinent part, that the governing body of a municipality may by a majority vote of the members elected to the governing body adopt a resolution exempting commercial personal property of a new business facility located in the municipality from the imposition of any property tax on commercial personal property authorized to be imposed by the governing body, subject to certain limitations; and

(C) In addition to an Industrial Revenue Bond Program Reform Proposal, the Administration has recommended a Small Business Initiative Proposal (“Proposal”) to create a small business economic development toolbox. The Proposal recommends implementation of the Act; and

(D) In order to permit the city to make a reasonable judgment as to whether or not to offer certain community development incentives permitted under the Act and upon what terms, the city has established these policy guidelines and application procedures.

(Ord. 35-2004)

§ 2-14-2-2 SHORT TITLE.

Sections [2-14-2-1](#) et seq. may be cited as the “Community Development Incentive Ordinance.”

(Ord. 35-2004)

§ 2-14-2-3 PURPOSE.

The purpose of §§ [2-14-2-1](#) et seq. is to permit the implementation of the Community Development Incentive Act, Sections 3-64-1 through 3-64-5 NMSA 1978, as amended

(the "Act") by authorizing the introduction of resolutions that would exempt specific commercial personal property of a new business facility located within the municipal limits from the imposition of any property tax on the commercial personal property authorized to be imposed by the city subject to certain limitations.

(Ord. 35-2004)

§ 2-14-2-4 DEFINITIONS.

For the purpose of §§ [2-14-2-1](#) et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMENCEMENT OF COMMERCIAL OPERATIONS. Occurs when the new business facility is first available for use by the taxpayer or first capable of being used by the taxpayer in the revenue-producing enterprise in which the taxpayer intends to use the new business facility.

FACILITY. Any factory, mill, plant, refinery, warehouse, dairy, feedlot, building or complex of buildings located within the state, including the land on which the facility is located and all machinery, equipment and other real and tangible personal property located at or within the facility and used in connection with the operation of the facility.

NEW BUSINESS FACILITY. A facility that satisfies the following requirements:

(1) The facility is employed by the taxpayer in the operation of a revenue-producing enterprise; the facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person; if the taxpayer employs only a portion of the facility in the operation of a revenue-producing enterprise and leases another portion of the facility to another person or does not otherwise use such other portions in the operation of a revenue-producing enterprise, the portion employed by the taxpayer in the operation of a revenue-producing enterprise shall be considered a "new business facility" if the requirements of subparagraphs (2), (3) and (4) of this definition are satisfied;

(2) The facility is acquired by or leased to the taxpayer on or after July 1, 2003; provided, the facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(3) If the facility was acquired by the taxpayer from another person and the facility was employed, immediately prior to the transfer of title to the facility to the taxpayer or to the commencement of the term of the lease of the facility to the taxpayer, by any other person in the operation of a revenue-producing enterprise, the taxpayer does not continue the operation of the same or a substantially identical revenue-producing enterprise at the facility; and

- (4) The facility is not a replacement business facility.

NEW BUSINESS FACILITY EMPLOYEE. A person employed by the taxpayer in the operation of a new business facility during the taxable year for which the exemption authorized by the Act is granted; a person shall be considered to have been so employed if the person performs duties in connection with the operation of the new business facility on:

- (1) A regular, full-time basis;
- (2) A part-time basis if the person is customarily performing the described duties at least 20 hours per week throughout the taxable year; or
- (3) A seasonal basis if the person performs the described duties for substantially all of the season customary for the position in which the person is employed.

The number of new business facility employees during any property tax year shall be determined by dividing by 12 the sum of the number of new business facility employees on the last business day of each month of that year. If the new business facility is in operation for less than the entire property tax year, the number of new business facility employees shall be determined by dividing the sum of the number of new business facility employees on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period.

NEW BUSINESS FACILITY INVESTMENT. The value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, that constitutes the new business facility or that is used by the taxpayer in the operation of the new business facility during the property tax year for which the exemption authorized by the Act is granted and the value of that property during the year shall be:

- (1) Its original cost if owned by the taxpayer; or
- (2) Eight times the net annual rental rate if leased by the taxpayer; the "net annual rental rate" is the annual rental rate paid by the taxpayer, less any annual rental rate received by the taxpayer from subrentals.

RELATED TAXPAYER.

- (1) A corporation, partnership, limited liability company, trust or association controlled by the taxpayer;
- (2) An individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer; or
- (3) A corporation, limited liability company, partnership, trust or association controlled by an individual, corporation, limited liability company, partnership, trust or association under the control of the taxpayer.

For the purposes of this definition, "control of a corporation" means ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; "control of a partnership, limited liability company or association" means ownership of at least 80% of the capital or profits interest in such partnership, limited liability company or association; and "control of a trust" means ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of the trust.

REPLACEMENT BUSINESS FACILITY. A facility as defined in "new business facility" of this section and referred to in this definition as a "new facility" that replaces another facility, referred to in this paragraph as an "old facility", located within the state in which the taxpayer or a related taxpayer previously operated but discontinued operating on or before the close of the first property tax year in which the exemption authorized by the Act is claimed; a new facility shall be deemed to replace an old facility if the following conditions are met:

(1) The old facility was operated by the taxpayer or a related taxpayer for more than three full property tax years out of the five property tax years next preceding the property tax year in which commencement of commercial operations occurs at the new facility; and

(2) The old facility was employed by the taxpayer or a related taxpayer in the operation of a revenue-producing enterprise and the taxpayer continues the operation of the same or a substantially identical revenue-producing enterprise at the new facility.

Notwithstanding the provisions of paragraph (1) of this definition, a facility shall not be considered a "replacement business facility" if the taxpayer's investment in the new facility exceeds \$3,000,000 or, if less, 300% of the investment in the old facility by the taxpayer or related taxpayer. The investment in the new facility and in the old facility shall be determined in the manner provided in "new business facility investment" of this section.

REVENUE-PRODUCING ENTERPRISE.

(1) The production, assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) The storage, warehousing, distribution or sale of any products of agriculture, mining or manufacturing;

(3) The feeding of livestock at a feedlot;

(4) The operation of laboratories or other facilities for scientific, agricultural animal husbandry or industrial research development;

(5) The generation of electricity;

(6) The performance of services of any type;

(7) The administrative management of any of the activities listed in subparagraphs (1) through (6) of this definition; or

(8) Any combination of any of the activities referred to in subparagraphs (1) through (7) of this definition.

SAME* or *SUBSTANTIALLY IDENTICAL REVENUE-PRODUCING ENTERPRISE. A revenue-producing enterprise in which the products produced or sold, the services performed or the activities conducted are the same in character and use and are produced, sold, performed or conducted in the same manner and to or for the same types of customers as the products, services or activities produced, sold, performed or conducted in another revenue-producing enterprise.

(Ord. 35-2004)

§ 2-14-2-5 GENERAL POLICIES.

(A) The incentives provided for under §§ [2-14-2-1](#) et seq. should be utilized primarily as a small business (defined by the U.S. Small Business Administration as independent businesses having fewer than 500 employees) economic development tool that is targeted toward start-up companies, incubation of start-up companies and early stage companies, and local companies attempting to expand in Albuquerque.

(B) All costs and expenses incurred by the city in connection with the application and qualification process for community development incentives shall be paid by the applicant/business facility. Costs and expenses incurred by the city in connection with the application and qualification process shall not be liabilities of the city. Advance payments shall include payments for services rendered by city staff, services rendered by outside consultants who may be retained by the city including, but not limited to, bond counsel and other attorneys, financial advisors, appraisers, and tax consultants. If the city uses outside consultants as “staff”, such as attorneys, those consultants shall be paid their normal rate for services.

(C) This policy is adopted to provide ease of administration and the largest tax/revenue base possible. The decision to grant an economic incentive to a particular new business facility shall be a legislative enactment of the City Council and Mayor exercised in accordance with law. The city shall encourage economic development and small business support provided the fiscal impact and return on investment is positive to the city.

(D) Existing city policies for development, growth management and conservation shall remain in effect and shall not be waived or relaxed upon the qualification of a new business facility for a development incentive.

(E) The city’s consent to any development incentive shall be conditioned upon the applicant/business facility following the procedures set forth in §§ [2-14-2-1](#) et seq.

(Ord. 35-2004)

§ 2-14-2-6 PRE-APPLICATION DISCUSSION WITH STAFF.

Potential applicants/business facilities are encouraged to schedule and conduct a pre-application meeting with city staff. Input provided by city staff shall be of an advisory nature, for the purposes of assisting applicants/business facilities in submitting completed applications with detail and information required to enable meaningful consideration by the City Council. The purpose of the pre-application meeting shall be to:

(A) Make an initial assessment whether the proposed application appears to be consistent with the Act, §§ [2-14-2-1](#) et seq., and the city's land use and development policies, zoning and other applicable regulation;

(B) To help identify any related city approvals that will be required to permit the development incentive;

(C) To identify other issues specific to the new business facility that should be addressed in the application, such as compliance with the city's growth policies, utility expansion policies, or other policies, rules or regulations; and

(D) To establish a preliminary schedule for (i) the applicant's/business facility's submittal of its application, (ii) city staff review of the application for completeness, (iii) review by the Albuquerque Development Commission ("Commission"), and (iv) City Council meeting(s) for its consideration of and action on the application.

(Ord. 35-2004)

§ 2-14-2-7 CONTENT OF APPLICATION.

All applications for development incentives shall be submitted to the city. Each application shall, at a minimum, contain the following:

(A) A description of the new business facility, including the nature of the business, a legal description of its boundaries, identity and addresses of all persons or entities with any interest in the facility and whether the facility is locally owned or operated;

(B) The number and type of new jobs to be created and a detailed description of the benefits provided;

(C) With regard to job characteristics, the number of jobs that benefit low and moderate income residents, whether the jobs meet or exceed median wages for the industry within the community, the percentage of jobs filled by current residents versus relocated individuals, whether the wages of all positions created are sufficient to eliminate the need for public assistance, whether the applicant will train new employees to fill the positions, advancement opportunities, and whether the applicant will use "in-plant" or other job training incentive programs;

- (D) The present use or condition of the business facility and any new infrastructure needs including possible cost sharing arrangements;
- (E) The present assessed value of the business facility property site, if available;
- (F) The estimated value of the commercial personal property to be located at the business facility;
- (G) A proposed project schedule for the acquisition and installation of the commercial personal property, including the expected date(s) the commercial personal property will be brought into service;
- (H) The total dollar amount of the new business facility and financing arrangements;
- (I) Information relating to the feasibility of the new business facility including information relating to the ability of the facility to generate revenues to render the facility self-liquidating;
- (J) The competition in the type of commerce or industry already existing within the city;
- (K) A proposed construction schedule for the new business facility;
- (L) Information regarding compliance with city planning and zoning policies and compliance with all federal, state, and local environmental laws, regulations and rules;
- (M) The effect on existing industry and commerce in the city including during and after the construction period, including the number of local construction jobs created;
- (N) Information about the project design, including conceptual site plans and the impacts on the neighborhood such as area enhancement and positive contribution to the neighborhood;
- (O) Information about the applicant's good corporate citizenship, both in terms of promoting donations and volunteerism, its willingness to commit to make local purchases, water use and water conservation practices, and whether facility emissions and/or waste is controlled and the facility has a satisfactory plan for reduction/disposal;
- (P) Resumes showing the experience of the applicant/business facility, and the experience of the architect, contractor and leasing agent, if relevant;
- (Q) A statement of plans for project management; and
- (R) Such other information as the city may reasonably require after initial review of the application, including but not limited to preliminary legal opinions, further information regarding the relationship of the application to the city's development objectives, additional proof of financial capability, business references, term sheets for financing and financial commitment letters.

(Ord. 35-2004)

§ 2-14-2-8 APPLICATION PROCEDURES.

(A) Ten copies of the application for development incentives shall be submitted to the Mayor's Office, which shall coordinate an interdepartmental analysis of each application.

(B) At the time of submission of the application, the applicant shall pay a \$2,500 non-refundable application fee. If reasonably necessary, additional funds may be requested by the city and must be paid by the applicant.

(C) After the application and fee are submitted, city staff shall arrange an initial conference with the applicant and appropriate city staff, for the purpose of reviewing the application for conformity with city policies. The city staff shall use its best efforts to review the application and conduct the initial conference within 30 days following payment of the application fee.

(D) If at any time during the application process city staff requests additional information, the applicant shall provide any and all supplemental information requested.

(E) After analysis of an application as supplemented, city staff, under the direction of the Mayor's office, may prepare a report including recommendations relating to the development incentive and an analysis of the fiscal impact of the business facility and its effects on the city. The report may provide a recommended disposition of the application, including any recommendation on the term of the commercial personal property tax exemption, and any additional requirements that shall be placed on the applicant/business facility. The report shall also make recommendations for community protection, including the requirement for a "clawback", i.e. a pro-rata repayment of the abated/exempted personal property taxes, depending on the amount of time elapsed from the date of passage of the implementing legislation to the date of closure of the facility. The city shall use its best efforts to complete the analysis and report concerning the application within 90 days following the initial application conference.

(F) If the application meets the qualifications provided herein as determined by city staff, the application, along with any report and recommendations by city staff, shall be presented by the applicant/business facility to the Commission, and thereafter to the City Council, along with appropriate implementing legislation. The Commission shall recommend to the Council approval, conditional approval or disapproval of a development incentive submitted for its review.

(Ord. 35-2004)

§ 2-14-2-9 COMMUNITY DEVELOPMENT INCENTIVES.

(A) The City Council, after review by the Commission, may by a majority vote of the members elected adopt a resolution exempting commercial personal property of a new business facility located within the city limits from the imposition of any property tax on commercial personal property authorized to be imposed by the city, subject to the limitations below.

(B) The exemption authorized in this section may be for up to 100% of the value for property taxation purposes of the property exempted.

(C) The exemption authorized by this section may be for any period of time between one year and 20 years as long as the exemption does not, under any circumstances, exceed 20 years. The effective date of any exemption shall be January 1 of the property tax year in which the new business facility commences commercial operations.

(D) Any exemption granted hereunder shall automatically terminate on the last day of the property tax year in which it expires pursuant to the exemption resolution or on the last day of the property tax year in which a new business facility ceases commercial operations, whichever occurs first.

(E) In addition, any exemption granted hereunder shall be subject to “clawback” provisions inasmuch as the business facility will be required to reimburse the city a pro-rata amount of economic development incentives, including tax exemptions/abatements, received by the business facility in the event the facility ceases operation prematurely. The exemption resolution shall clearly define the terms of the clawback and the applicant/business facility will be required to acknowledge receipt, understanding and a willingness to comply with the terms of the clawback.

(F) The new business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the property tax year. If the new business facility is in operation for less than an entire property tax year, the new business facility investment shall be determined by dividing the sum of the total value of the property on the last business day of each full calendar month during the portion of the property tax year during which the new business facility was in operation by the number of full calendar months during that period.

(G) If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility eligible for the exemption authorized by the Act if:

(1) The taxpayer’s investment in the expansion exceeds \$1,000,000 or, if less, 100% of its investment in the original facility prior to expansion; and

(2) The expansion otherwise constitutes a new business facility.

The taxpayer’s investment in the expansion and in the original facility prior to expansion shall be determined in the manner provided in § [2-14-2-3](#) under the definition of “new business facility investment”.

(H) If a facility that does not constitute a new business facility is expanded by the taxpayer, the expansion shall be considered a separate facility for purposes of the exemption granted by the Act if:

(1) The expansion results in the employment of ten or more new business facility employees over and above the average number of employees employed by the taxpayer during the twelve months immediately prior to the expansion, computed pursuant to § [2-14-2-3](#) under the definition of “new business facility employee”; and

(2) The expansion otherwise constitutes a new business facility.

(Ord. 35-2004)

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