

PART 8: INDEPENDENT OFFICE OF HEARINGS

§ 2-7-8-1 SHORT TITLE.

This part may be cited as the Independent Office of Hearings Ordinance.

(Ord. 31-2007; Am. Ord. 16-2009)

§ 2-7-8-2 FINDINGS.

The City Council finds as follows:

(A) The City of Albuquerque has a large number of ordinances that call for hearings to be conducted by hearing officers. In a majority of those ordinances there is no provision for how the hearing officer is to be selected or the qualifications for the hearing officer.

(B) In those cases where there is no specification as to how the hearing officer is to be selected, the city uses both city employees and independent contractors to act as hearing officers.

(C) It is critical that any city hearing officer act in a fair and impartial manner and also be perceived as acting in a fair and impartial manner.

(D) The use of city employees as hearing officers, under the supervision of the executive branch of city government, has created a perception that the independence of hearing officers has been or can be compromised.

(E) To ensure confidence in the hearing officer process it has become necessary to create an Independent Office of Hearings to protect employees acting as hearing officers from actual or perceived influence from the city's administration.

(F) With minor exceptions, it is also necessary to amend those existing ordinances that allow for the ad hoc appointment of hearing officers by the executive branch of city government so that those hearings are also conducted by the Independent Office of Hearings.

(G) The State of New Mexico adopted legislation that requires that certain matters "shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality."

(H) The Council finds it will minimize costs and help ensure the impartiality of hearing officers to have the Court appoint that hearing officer who serves as the City Hearing Officer, responsible for the operation of the Independent Office of Hearings.

(Ord. 31-2007; Am. Ord. 16-2009)

§ 2-7-8-3 INDEPENDENT OFFICE OF HEARINGS.

(A) There is hereby created the Independent Office of Hearings which shall be directed by the City Hearing Officer.

(B) The City Hearing Officer shall be given autonomy in the performance of all assigned duties.

(C) The Independent Office of Hearings is neither part of the city's executive nor legislative branches.

(D) The Independent Office of Hearings shall be responsible to conduct all hearings specifically assigned to it by ordinance, or where an ordinance provides that a hearing is to be conducted by "a hearing officer", "a city hearing officer", "the hearing officer" or "the city hearing officer". There are certain hearings within the city that are not within the responsibility of the Independent Office of Hearings and not governed by §§ 2-7-8-1 et seq. Hearings which are not the responsibility of the Independent Office of Hearings and not subject to §§ 2-7-8-1 et seq. include but are not limited to: Land Use Hearing Officer hearings; Zoning Hearing Examiner hearings; liquor license hearings; hearings within the Department of Environmental Health; personnel hearings; hearings the responsibility for which is with a board or commission that chooses to appoint a hearing officer to conduct the hearing and make a record and/or recommendation prior to action by that board or commission. That these hearings are not governed by this ordinance does not preclude a hearing officer who is within the Independent Office of Hearings from conducting such a hearing.

(E) The City Hearing Officer shall have the responsibility to see that all administrative hearings of the city, which are conducted by a hearing officer under the authority of the Independent Office of Hearings, are properly and timely conducted and may adopt and publish rules for the conduct of hearings, not inconsistent with any rules established by ordinance.

(F) Except for the appointment of hearing officers the City Hearing Office shall have the final decision on the hiring of all employees of the Independent Office of Hearings. All hearing officers within the Independent Office of Hearings will be called

upon to hear cases of nuisance violations involving speeding or a failure to comply with traffic signs or signals. Therefore, the Presiding Judge of the Civil Division of the Second Judicial District shall appoint all hearing officers, including non-employee contract hearing officers, within the Independent Office of Hearings. Employees of the Independent Office of Hearings, other than hearing officers and the City Hearing Officer, shall be city employees subject to the Personnel Rules and Regulations of the city. Hearing officers, including the City Hearing Officer, shall be city employees but the status of each as a contract, classified or exempt employee shall be decided by the city at the time of employment.

(G) While the City Hearing Officer shall be an attorney licensed to practice law in the State of New Mexico, other employees and contract hearing officers within the Independent Office of Hearings are not required to be attorneys.

(H) In cases of conflict or due to workload the City Hearing Officer shall, in the City Hearing Officer's sole discretion, have the authority to contract for the services of hearing officers who are not city employees. Such contract hearing officers shall be appointed by the Presiding Judge of the Civil Division of the Second Judicial Court.

(I) The City Hearing Officer shall annually prepare a budget for the office.

(J) The Independent Office of Hearings shall be funded from the General Fund.

(K) The City Hearing Officer shall present a quarterly written report to the City Council and administration on the status of the Independent Office of Hearings including the nature of cases resolved and pending.

(L) It shall be a violation, subject to the penalties of § 1-1-99 ROA 1994, for any city official to attempt directly or through a third party to influence the outcome of any matter under consideration by the Independent Office of Hearings other than in the normal course of representing a position in the conduct of a case.

(Ord. 31-2007; Am. Ord. 16-2009)

§ 2-7-8-4 APPOINTMENT PROCESS.

(A) The Presiding Judge of the Civil Division of the Second Judicial Court shall appoint all hearing officers who are either employees or contractors in the Independent Hearing Office. The appointment process shall be determined by the Presiding Judge and the city shall provide such assistance as the Presiding Judge shall request.

(B) Appointments shall be effective for such period of time as is determined by the Presiding Judge at the time of appointment. In no case shall an appointment be effective for more than four years. A hearing officer may be reappointed. The Presiding Judge may make temporary appointments to fill vacancies until such time as a selection process determined by the Presiding Judge has been used to make a longer term appointment.

(Ord. 16-2009)

§ 2-7-8-5 CITY HEARING OFFICER.

(A) The minimum requirements for the City Hearing Officer shall be ten years experience as an attorney, admission to the practice of law in the State of New Mexico, an understanding of administrative law and supervisory experience.

(B) The City Hearing Officer shall be appointed by the Presiding Judge of the Civil Division of the Second Judicial Court. The City Hearing Officer shall serve in that position for a period of four years, but may be reappointed by the Presiding Judge at the expiration of that term. The City Hearing Officer shall continue to serve after the end of the four year term until reappointed or until a new City Hearing Officer is appointed.

(C) The City Hearing Officer shall be provided with the necessary staff to operate the Independent Office of Hearings.

(D) During any period when there is no City Hearing Officer or the City Hearing Officer is unavailable or incapacitated, the Mayor may appoint an interim City Hearing Officer. An interim City Hearing Officer shall be an employee or contract hearing officer who was previously appointed by the Presiding Judge of the Civil Division of the Second Judicial Court and whose appointment is still in effect. The Presiding Judge of the Civil Division of the Second Judicial Court shall immediately be notified of the circumstances surrounding the appointment of an interim City Hearing Officer and the interim City Hearing Officer shall serve in that position until the appointment of a new City Hearing Officer by the Presiding Judge of the Civil Division of the Second Judicial Court, if the absence of the City Hearing Officer is permanent, or until the return to the position of the City Hearing Officer, if the absence is temporary.

(E) The City Hearing Officer shall not be removed from the position during the four year term except for misfeasance or malfeasance in office determined by a majority vote of all members of the City Council following a public hearing conducted under such procedures as the Council may adopt. Such removal shall not be effective until all options for judicial review have been exhausted.

(F) The City Hearing Officer shall have the sole authority to terminate an employee of the Independent Office of Hearings including any hearing officer.

(Ord. 31-2007; Am. Ord. 16-2009)

§ 2-7-8-6 CONDUCT OF HEARINGS.

The following shall govern the conduct of any hearing which is conducted under the authority of the Independent Office of Hearings unless a separate procedure is created by city ordinance or other applicable law.

(A) Any hearing required to be conducted by the City Hearing Officer may also be conducted by any other hearing officer within the Independent Office of Hearings.

(B) Hearing officers are required to disclose to the parties any matter that could be considered a conflict of interest with their duty to render fair and impartial decisions. If the hearing officer has a conflict of interest, the hearing officer must disqualify himself or herself from continued participation in the matter and another hearing officer will be appointed.

(C) Hearing officers shall refrain from engaging in any ex-parte communication with any party or their counsel, except by express agreement of the parties or for non-substantive communication involving scheduling or procedure.

(D) Testimony shall be taken under oath administered by the hearing officer. Testimony shall be preserved by tape recording or stenographically. Testimony shall be preserved at least until the time for filing an appeal has expired.

(E) The hearing officer responsible for each hearing shall utilize such procedures as are necessary to ensure that each party's rights are protected.

(Ord. 31-2007; Am. Ord. 16-2009)