

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

1. TITLE:

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

2. AUTHORITY AND SCOPE:

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

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

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

2.4 If a more specific law applies to the hearing type at issue, that more specific regulation shall control. In the event that any of the IHO Rules conflict with any specific provision of law establishing a hearing and appeals process, such specific provision shall control.

3. DEFINITIONS:

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

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

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

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

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

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

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

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

4.4 The hearing officer may provide written notice to the appellant when the appellant files an incomplete or deficient or incomplete appeal. If a party fails to cure the deficiency within 15 days, the IHO may enter an order which provides for dismissal of the party’s claim without prejudice.

5. FILING OF PLEADINGS:

5.1 All pleadings shall be filed with the IHO:

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

6. FAILURE TO RESPOND/ANSWER:

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

7. REPRESENTATION AT HEARING:

- 7.1 Only the following shall be authorized to represent a party at a hearing before the IHO, unless otherwise expressly authorized by ordinance, or another provision of law:
- 7.1.1 A party to the action;
 - 7.1.2 An authorized agent, if the party is an entity or business;
 - 7.1.3 An attorney authorized to practice law in New Mexico;
 - 7.1.3.1 Any attorney wishing to represent a party shall file a formal written entry of appearance directly with the IHO, listing their mailing address, phone number, and a valid email address; or
 - 7.1.4 A union representative appearing on behalf of its member(s).

8. PREHEARING CONFERENCES:

- 8.1 The hearing officer may conduct a prehearing conference upon the request of either party or at the hearing officer's discretion, at which time the hearing officer may require

the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.

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

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

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

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

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

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

10. BURDEN OF PROOF, PRESENTATION OF CASE:

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

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

10.3 The hearing officer may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be adopted as evidence by sworn oath of the party-witness who made the opening statement.

10.4 All testimony must be given under oath and will be subject to questioning of the opposing party. The hearing officer may also ask questions of the witness as appropriate. At the hearing officer's discretion, redirect and recross may be allowed.

10.5 The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the hearing officer in writing after conclusion of the hearing.

10.6 The hearing officer may also require the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing.

11. EVIDENCE:

11.1 The New Mexico rules of evidence and civil procedure shall not apply in any matter before the IHO unless otherwise expressly and specifically required by law, regulation, or order of the hearing officer in accordance with ROA 1994, § 2-7-8-9(A). Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

11.2 All evidence shall be submitted to the Independent Hearing Office at least 5 days prior to any hearing.

11.2.1 By email at: summonsandappeals@cabq.gov;

11.2.2 By mail to: Office of the City Clerk, P.O. Box 1293, Albuquerque, NM 87103; or

11.2.3 In person at: Office of the City Clerk, 600 2nd St. NW, Albuquerque, NM 87102.

11.3 Evidence shall be properly labeled prior to submission. The appellee shall label evidence using numbers (such as Exhibit 1, Exhibit 2, Exhibit 3). The appellant shall label evidence using letters (such as, Exhibit A, Exhibit B, Exhibit C). Evidence submitted less than 5 days before a hearing may be admitted at the discretion of the hearing officer.

11.4 Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained by the IHO as part of the administrative record.

11.5 In lieu of the introduction of tangible objects as exhibits, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object for the record

11.6 The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute. Administrative notice may be taken at any stage in the proceeding whether or not requested by the parties. A party is entitled to respond as to the propriety of taking administrative notice which shall include the opportunity to refute a noticed fact.

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

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

- 12.1** Any person having relevant, material knowledge related to one of the issues in a hearing may testify as a witness under oath in the matter. Upon affirming the oath, the witness may be questioned by both parties and by the hearing officer.
- 12.2** Unless a more specific provision applies, witnesses are ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the assigned hearing officer allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone or videoconference.
- 12.3** If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party shall file a witness list designating the witness as an expert witness at least 5 days before the scheduled hearing, and provide the witness list to the opposing party and the IHO. The party intending to call the expert witness shall specifically identify the expert witness, the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and listing of any materials the expert reviewed as part of reaching their expert opinion. The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.
- 12.4** At the hearing, either party can invoke the exclusionary rule, excluding all witnesses other than the real party in interest, their representative, and any designated expert witness from the proceeding until the time of their testimony. If the exclusionary rule has been invoked, the witnesses shall not discuss their testimony with each other until the conclusion of the proceeding. When the exclusionary rule has been invoked, any witness who remains in the hearing after conclusion of their testimony may not be recalled as a witness in the proceeding, except that any witness may observe the testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

13. HEARING OFFICER POWERS AND RESPONSIBILITIES:

- 13.1** Hearings shall be presided over by a hearing officer appointed or hired in accordance with the IHO Ordinance.
- 13.2** In the performance of the hearing officer's adjudicative functions, the hearing officer is prohibited from engaging in any ex parte communications about the substantive issues with any party on any matter. An ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

14. EFFECTIVE DATE AND FILING:

14.1 These rules shall become effective on **DATE** and shall be filed in the Office of the City Clerk.

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

RECOMMENDED:

Ethan Watson
City Clerk

Date

APPROVED AS TO FORM:

Lauren Keefe
City Attorney

Date

APPROVED:

Dr. Samantha Sengel
Chief Administrative Officer

Date