

**CITY of ALBUQUERQUE
TWENTIETH COUNCIL**

COUNCIL BILL NO. O-13-48 ENACTMENT NO. 0-2013-009

SPONSORED BY: Don Harris, by request

ORDINANCE

1
2 **AMENDING SECTION 9-10-1-1 ROA 1994 TO RENAME THE MUNICIPAL**
3 **REFUSE COLLECTION SERVICE ORDINANCE THE MUNICIPAL SOLID WASTE**
4 **ORDINANCE; AMENDING SECTION 9-10-1-3 ROA 1994 TO AMEND**
5 **DEFINITIONS; AMENDING SECTION 9-10-1-4 ROA 1994 TO PROVIDE**
6 **CLARIFICATION OF ADMINISTRATION; AMENDING SECTIONS 9-10-1-5 ROA**
7 **1994, 9-10-1-7 ROA 1994 AND 9-10-1-10 ROA 1994 TO CLARIFY**
8 **TERMINOLOGY AND REQUIREMENTS; AMENDING SECTION 9-10-1-6 ROA**
9 **1994 TO ADD A PROVISION FOR AUTOMATED COLLECTION CARTS AND**
10 **ALLOW ENFORCEMENT OF PENALTIES FOR CODE VIOLATIONS; AMENDING**
11 **SECTION 9-10-1-8 ROA 1994 TO ALLOW A COST OF SERVICE FEE**
12 **DETERMINED BY THE MAYOR FOR UNSCHEDULED OR EMERGENCY**
13 **COLLECTION AND LATE SET OUTS AND ADDING A PROVISION FOR**
14 **DISPOSAL OF INFECTIOUS WASTE, HAZARDOUS WASTE AND TIRES AND**
15 **TO REMOVE THE EXTRA CART CHARGE AND INCORPORATE FEE IN THE**
16 **RATES APPENDIX AND TO REPEAL THE NEW CONSTRUCTION FEE;**
17 **AMENDING SECTION 9-10-1-11 ROA 1994 TO REMOVE RESIDENTIAL**
18 **COLLECTION AND DISPOSAL FEES AND INCORPORATE FEES IN THE RATES**
19 **APPENDIX, TO ESTABLISH RESPONSIBILITY OF PROPERTY OWNER FOR**
20 **SERVICE AND FEES; TO ADD SECTION 9-10-1-98 ROA 1994 TO ALLOW FOR**
21 **ENFORCEMENT OF THE ORDINANCE.**

22 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
23 **ALBUQUERQUE:**

24 **SECTION 1. Sections 9-10-1-1 et seq., ROA 1994, is amended to read:**

1 **"§ 9-10-1-1 SHORT TITLE.**

2 Sections 9-10-1-1 et seq. shall be known and may be cited as the
3 **"Municipal Solid Waste Ordinance" of the City.**

4 **§ 9-10-1-2 PURPOSE.**

5 The purpose of §§ 9-10-1-1 et seq. is to preserve the health, comfort, and
6 convenience of the inhabitants of the City and to preserve and improve the
7 environmental quality of the City.

8 **§ 9-10-1-3 DEFINITIONS.**

9 For the purpose of §§ 9-10-1-1 et seq., the following definitions shall apply
10 unless the context clearly indicates or requires a different meaning.

11 **ASHES.** The residue from the burning of wood, coal, coke, or other
12 combustible materials.

13 **COMMERCIAL COLLECTION.** All collection not otherwise defined as
14 residential collection.

15 **COMMINGLED CONTAINERS.** Any container used for the purpose of
16 collecting multiple recyclables approved by the City.

17 **HAZARDOUS WASTE.** Any solid waste that meets the definition of
18 hazardous waste under 40 CFR 261.3 and which because of its quantity,
19 concentration or physical, chemical or infectious characteristics may cause or
20 significantly contribute to an increase in mortality or an increase in serious
21 irreversible or incapacitating illness; or poses a substantial present or
22 potential hazard to human health or the environment when improperly treated,
23 stored, transported, disposed of or otherwise managed.

24 **INFECTIOUS WASTE.** A solid waste that carries a probable risk of
25 transmitting disease to humans, including but not limited to:

- 26 (1) Cultures and stocks of infectious agents and associated
27 biologicals.
- 28 (2) Human pathological wastes.
- 29 (3) Human and body fluid waste, including, but not limited to:
- 30 (a) Liquid waste human blood.
- 31 (b) Blood products.

1 (c) Items caking, flaking, saturated, or dripping with human
2 blood, including serum, plasma, and other blood components.

3 (d) Items contaminated by body fluids from persons during
4 surgery, autopsy, other medical procedures, or laboratory procedures.

5 (e) Specimens of blood products, and their containers

6 (f) Other potentially infectious materials, including, but not
7 limited to, the following body fluids: semen, vaginal secretions, cerebrospinal
8 fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic
9 fluid, saliva in dental procedures, and body fluid that is visibly contaminated
10 with blood, and all body fluids in situations where it is difficult or impossible
11 to differentiate between body fluids.

12 (g) Contaminated animal carcasses, body parts, blood,
13 blood products, secretions, excretions, and bedding of animals that were
14 known to have been exposed to zoonotic infectious agents for non-zoonotic
15 human pathogens.

16 (h) Biological wastes and waste contaminated with blood,
17 excretions, exudates, or sections from.

18 (i) Discarded sharps, hypodermic needles, syringes (with
19 attached needle), Pasteur pipettes, scalpel blades, blood vials, needles with
20 attached tubing, culture dishes, suture needles, slides, cover slips, and other
21 broken or unbroken glass or plastic ware, unless properly treated or otherwise
22 specifically exempted.

23 **MAYOR.** The Mayor of the City or his designated representative.

24 **MULTIPLE FAMILY DWELLING.** A building, or portion thereof, designed for
25 occupancy of two or more families living independently.

26 **PERSON.** Any natural person or any firm, partnership, association,
27 corporation, company, or organization of any kind.

28 **PROPERTY MANAGEMENT COMPANY OR HOMEOWNERS ASSOCIATION.**
29 A business or association of homeowners within a community whose purpose
30 includes to ensure the provision of and maintenance of community facilities

1 and services for the common benefit of the residents, including arranging for
2 solid waste and recycling services.

3 **RECYCLABLE MATERIALS.** Materials that would otherwise become refuse
4 if not recycled and that can be collected, separated, processed, reclaimed or
5 composted and placed in use in the form of raw materials, or products.

6 **RECYCLING.** Any process by which recyclable materials are collected,
7 separated, processed, reclaimed or composted and reused or returned to use
8 in the form of raw materials or products.

9 **REFUSE.** Includes but is not limited to all putrescible and nonputrescible
10 solid wastes (except body wastes) such as garbage, rejected or waste food,
11 offal, swill, ashes, dirt, slop, waste paper, trash, rubbish, waste, litter or
12 unwholesome material of any kind; street cleaning; but shall not include
13 hazardous or toxic wastes, such as paints, corrosives, combustibles, oils,
14 poisons, dead animals, hot ashes, coals, vehicle batteries, infectious waste
15 and heavy or large building materials.

16 **RESIDENTIAL COLLECTION.** All non-commercial collection from eight or
17 less mobile homes on a single site, multiple dwellings with eight or less
18 dwelling units on a single site, and single dwellings.

19 **RESPONSIBLE PARTY.** For single-family dwellings the responsible party
20 shall be the property owner. For a multiple-family dwelling the responsible
21 party shall be the owner, manager, or agent. For a business, the responsible
22 party shall be the property owner.

23 **RUBBISH.** Includes but is not limited to all nonputrescible solid wastes
24 (excluding ashes), such as vehicle bodies and solid both combustible and
25 noncombustible wastes such as paper, cardboard, cans, wood, yard clippings,
26 leaves, dirt, glass, bedding, crockery, and similar materials.

27 **SITE.** Any lot held in single ownership and requiring solid waste collection
28 service; if several adjacent lots are owned by a developer at the time of
29 building permit issuance, there is a refutable presumption that they will be
30 separate sites when solid waste collection is required.

1 **SOLID WASTE.** Includes but not be limited to discarded material, refuse,
2 garbage, rubbish, litter, recyclable material, green waste, yard waste, or any
3 waste that meets the definition of solid waste under 40 CFR 261.2.

4 **UNAUTHORIZED WASTE.** Any other waste not permitted for collection or
5 disposal at the landfill, convenience centers, or approved for recycling.

6 **§ 9-10-1-4 ADMINISTRATION.**

7 **(A)** The Mayor is responsible for the administration of §§ 9-10-1-1 et seq.

8 **(B)** Powers delegated to the Mayor may be delegated by the Mayor to
9 other appropriate City departments as he/she may deem necessary to carry
10 out the requirements of §§ 9-10-1-1 et seq.

11 **(C)** Reasonable rules and regulations shall be prescribed by the Mayor
12 in written form to carry out the intent and purpose of §§ 9-10-1-1 et seq.

13 **(D)** The Mayor shall have the authority to establish reasonable fees for
14 services for which fees are not otherwise provided herein.

15 **(E)** The Mayor shall have the authority to delay, suspend or deny
16 collection or disposal services for failure to comply with §§ 9-10-1-1 et seq.
17 and the rules and regulations prescribed.

18 **(F)** It shall be unlawful for any person to threaten, intimidate, use
19 violence or physical force to intentionally obstruct, impede or interfere with
20 any City employee while in the performance of the employee's duties as
21 authorized by §§ 9-10-1-1 et seq.

22 **§ 9-10-1-5 COLLECTION AUTHORIZATION.**

23 **(A)** Except as otherwise provided herein, all refuse accumulated in the
24 City shall be collected, conveyed, and disposed by the City. No person shall
25 collect, convey over any of the streets or alleys of the City, or dispose of any
26 refuse accumulated in the City except as herein provided. The Mayor shall
27 have the authority to make regulations concerning the days of collections,
28 type and location of pick-up, conveyance and disposal, as he/she should find
29 necessary and to change and revoke same.

30 **(B)** Sections 9-10-1-1 et seq. shall not prohibit the actual producers of
31 solid waste or the owners of premises upon which solid waste has

1 accumulated from personally collecting, conveying and disposing of such
2 solid waste. Producers or owners must comply with the provisions herein and
3 with any other governing law or ordinances and pay applicable collection fees
4 for the level of service as deemed by the Mayor or designee that is required
5 absent any private collection, conveyance or disposal of solid waste. The
6 Mayor may enjoin the collection, conveyance or disposal of solid waste by
7 commercial entities.

8 (C) *Annual Permit to Transport Solid Waste.* The Mayor is authorized to
9 issue permits for a fee determined by the Mayor or designee to transport, by
10 persons other than actual producers or owners of premises upon which
11 commercial solid waste accumulates, certain types of solid waste. The Mayor
12 is authorized to waive the following applicable collection fees:

- 13 (1) Construction or demolition site debris.
- 14 (2) Plant-material debris, including trees.
- 15 (3) Material being transported for the purpose of recycling.

16 (D) *Regional Resource Recovery Program.* The Mayor is authorized to
17 initiate studies for the regional need, location, and operation of facilities to
18 recover material or energy resources from solid waste.

19 § 9-10-1-6 PRECOLLECTION PRACTICES.

20 (A) *Separation of Refuse.* Refuse, ashes and recyclable material shall
21 each be placed and maintained in separate containers if the Mayor so
22 requires.

23 (B) *Preparation of Commercial Refuse.* All refuse placed in refuse
24 containers for collection shall be drained of all liquids.

25 (C) *Duty to Provide and Maintain Commercial Containers in Sanitary*
26 *Condition.* Refuse containers shall be provided by the owner, tenant, lessee,
27 manager, or occupant of the premises. Refuse containers shall be maintained
28 in good condition by the property owner. Any container that does not
29 conform to the provisions of §§ 9-10-1-1 et seq. or that may have ragged or
30 sharp edges or any other defect liable to hamper or injure the person
31 collecting the contents thereof shall be promptly replaced by the property

1 owner within thirty (30) days of notification. If the property owner fails to
2 comply, the Mayor may designate or suspend service.

3 (D) *Commercial Refuse Containers.*

4 (1) Commercial or business establishments, nine or more multiple
5 family dwellings on a single site, and nine or more mobile homes on a single
6 site shall be required to furnish metal bins built according to specifications as
7 set forth by the Mayor.

8 (2) They shall be kept in a clean, neat, and sanitary condition at all
9 times, by the property owner. This shall include a requirement that the bins be
10 kept painted and maintained as necessary by the property owner to maintain a
11 clean and neat condition. Containers must be free of all graffiti. The City has
12 the right to identify any public or private collection container with identifying
13 marks, radio frequency identification (RFID) tags, or other technique, for the
14 purpose of uniquely identifying the collection container for service or tracking.
15 Such need and specifications shall be based on the volume and type of refuse
16 produced by the particular commercial or business establishment or multiple
17 family dwelling.

18 (3) It is the duty of the owner, tenant, lessee, manager, or
19 occupant of the premises to provide containers that are compatible with City
20 equipment and meet all other specifications established by the Mayor. It is the
21 duty of the owner, tenant, lessee, manager, or occupant to contact the Solid
22 Waste Management Department of the City on any relocation of container,
23 change of service or change of business.

24 (4) *Commercial Garbage Containers.* Garbage containers shall be
25 equipped with suitable handles and tight fitting covers, and shall be
26 watertight. Garbage containers shall be of a type approved by the Mayor and
27 shall be kept clean, neat, and in sanitary condition at all times.

28 (5) *Containers for Hot Ashes and Other Materials.*

29 (a) No person shall deposit hot ashes, cinders, smoldering
30 coals, or greasy or oily substances liable to spontaneous combustion, into

1 any combustible receptacle, or place the same within ten feet of any
2 combustible materials.

3 (b) For at least 48 hours prior to the scheduled time of
4 collection, ashes or cinders shall be cold, and shall be placed in a sealed
5 plastic bag with a capacity of not more than 20 gallons and when loaded shall
6 weigh not more than 50 pounds, and then may be placed in the approved City
7 container.

8 (E) *Residential Refuse and Recyclable Material Containers.*

9 (1) Single family dwellings and multiple family dwellings of eight
10 or less dwellings on a single site, and mobile homes of eight or less mobile
11 homes on a single site and other customers using automation collection carts
12 shall be required to enclose all refuse and recyclable material in the following
13 manner as determined by the Mayor:

14 (a) Automated collection carts may not exceed 150 pounds
15 when full.

16 (b) All refuse and/or recyclable material shall be properly
17 contained and secured before being placed in the automated collection cart
18 and the lid shall be closed so as to prevent contents from being scattered,
19 blown or spilled.

20 (c) Any areas served by manual collection, using plastic
21 bags will not exceed 40 pounds when containing refuse. All large and
22 disposable containers and plastic bags must be tightly secured so as to
23 prevent refuse from being scattered, blown or spilled. Sharp or extremely
24 heavy materials will be placed in disposable containers other than plastic
25 bags. Tree trimmings and similar refuse suitable for bundling will be tied in
26 bundles not to exceed four feet in length and two feet in diameter and 40
27 pounds in weight.

28 (c) Any areas served by manual collection, must have
29 recyclable materials properly bundled, packaged, and placed at the curb for
30 collection, as determined by the Mayor.

1 (2) Residential refuse and recyclable material shall be placed out
2 for pick up no later than 7:00 a.m., on the regularly scheduled day but no
3 sooner than 12 hours prior to pick up unless otherwise specified by the Mayor.
4 Residents who put their refuse and/or recyclable materials out after the truck
5 has been there, or have had their solid waste blocked or hidden from view by
6 any object such as a vehicle, shall be responsible for storing their refuse
7 and/or recyclable material until their next regular day of pick up, or pay an
8 additional fee as determined by the Mayor for requested curbside collection
9 service or disposing of it at an approved disposal facility unless otherwise
10 specified by the Mayor.

11 (3) Residential refuse and recyclable material shall be placed in
12 the street, against the curb but shall not be placed on the sidewalk and shall
13 be clear of pedestrian and vehicular traffic. City issued automation collection
14 carts containing refuse or recyclable material shall be placed in the gutter,
15 wheels against the curb, near the right side of the driveway, or as close as
16 possible to the edge of the street. Such refuse and/or recyclable material shall
17 be clearly visible and accessible for solid waste collection, and free from any
18 obstructions including but not limited to mailboxes, trees, shrubbery, walls,
19 fences, other carts and vehicles. Residents who fail to comply shall be
20 responsible for storing their refuse and/or recyclable material until their next
21 regular pick up day, or pay an additional fee as determined by the Mayor for
22 requested curbside collection service or disposing of it at an approved
23 disposal facility unless otherwise specified by the Mayor or his designated
24 representative. The Mayor shall have the authority to designate the collection
25 site where required by special circumstances based on standards and
26 regulations authorized by §§ 9-10-1-1 et seq.

27 (4) Within 24 hours after scheduled pickup, automated collection
28 carts shall be removed from curbside.

29 (5) For at least 48 hours prior to the scheduled time of collection,
30 ashes or cinders shall be cold and shall be placed in a sealed plastic bag with
31 a capacity of not more than 20 gallons and when loaded shall weigh not more

1 than 50 pounds and then placed in automated collection carts or manual
2 collection plastic bags.

3 (6) Automated collection carts are the property of the City.
4 Automated collection carts are assigned to a specific street address and shall
5 be maintained and cleaned by the user. Automated collection carts shall not
6 be modified or altered in any way. It is the responsibility of the property owner
7 to ensure that the cart used for service is the cart that is assigned to that
8 street address.

9 (7) Automated collection carts shall be available for retrieval by
10 the Solid Waste Management Department before service can be suspended,
11 with a letter of vacant premise (See § 9-10-1-11 (C) (2)). If the assigned
12 automation collection cart is not recovered, a replacement fee will be charged
13 to the property owner.

14 § 9-10-1-7 STORAGE OF SOLID WASTE FOR COMMERCIAL AND MULTI-
15 FAMILY DWELLING COLLECTION

16 (A) *Appearance of Collection Points.* At every commercial and multiple
17 family dwelling collection point which is within 80 feet of a public street, solid
18 waste and recyclable material containers shall be shielded from public view in
19 accordance with City of Albuquerque Solid Waste Enclosure specifications.
20 No commercial collection point shall be on public street right of way unless an
21 appropriate variance is granted.

22 (B) *Selection and Design of Collection Points.* Specific points for
23 commercial collection, multiple-family dwelling collection, solid waste storage,
24 and pickup shall be designated by the Mayor, using the following procedure
25 and criteria. A commercial collection, solid waste and recyclable material
26 storage, and pickup point not so approved is unlawful.

27 (1) *Site Plan Submission.* A property owner or his agent, whose
28 site will require commercial collection, shall submit an accurate site plan of
29 the whole site for which service is desired to the City's Planning Department.
30 The plan shall be drawn accurately, at a scale adequate to clearly show all the
31 following required data:

- 1 (a) Lot lines.
- 2 (b) Existing and planned buildings.
- 3 (c) Proposed collection points and enclosures.
- 4 (d) On the premises or on public right-of-way within 15 feet
- 5 of the premises -- existing and planned sidewalks, curb cuts, drives, parking
- 6 spaces, landscaping, recreation areas, free-standing signs, poles (e.g., street
- 7 lights), and other structures, provided that these items may be omitted where
- 8 not within 15 feet of a street, private drive, or refuse collection point.
- 9 (e) On the premises or adjacent to the premises of public
- 10 right-of-way - fire plugs and bus stops.
- 11 (f) Must clearly address residential neighborhoods that are
- 12 within 40 feet of collection point.

13 (2) Enclosure Plan Submission. A property owner or his agent,

14 whose site will require commercial collection and/or multiple-family dwelling

15 recycling collection, shall submit a plan of the proposed solid waste container

16 enclosure when the site plan is submitted.

17 (3) Site Plan Review and Approval.

18 (a) The Mayor may approve requested locations for

19 commercial collection and enclosures or may require alternative locations.

20 Such alternative locations shall be drawn on the relevant site plan and

21 accepted by the applicant.

22 (b) The Mayor shall evaluate and select locations for

23 commercial collection according to the following criteria:

- 24 1. Collection from public alleys shall be maximized,
- 25 to the extent that it is consistent with efficient collection routes.
- 26 2. Ready, safe access by City vehicles and crews
- 27 shall be available.
- 28 3. View from public street shall be minimized.
- 29 4. Distance from residences and outdoor recreation
- 30 or relaxation areas shall be maximized.
- 31 5. Distance from bus stops shall be maximized.

1 (c) No site plan shall be approved if it is contrary to the
2 provisions of the Zoning Code or plans approved thereunder. No site plan
3 shall be approved if it would place a container which is over three feet high in
4 a required front or corner zoning setback area unless such a container was
5 approved prior to October 1, 1985.

6 (d) No site plan shall be approved if it locates a container
7 on public street right of way unless an appropriate variance is granted.

8 (e) Commercial collection sites shall be paved with a
9 concrete apron meeting City of Albuquerque Solid Waste specifications for the
10 designated container. However, commercial collection sites approved prior to
11 October 1, 1985, which sites were paved in a way which met the off-street
12 parking requirements of the Zoning Code (§14-16-3-1(E)(1)) prior to that date,
13 are exempt from the concrete-paving requirement if the owner of the property
14 agrees in writing to maintain the paving and hold the City harmless for any
15 damage to the pavement resulting from solid waste collection.

16 (f) At the time the site plan is submitted, the Mayor shall
17 confirm that commercial service is appropriate as provided for herein.

18 (g) The site plan approved under this section shall be
19 considered part of the service agreement between the City and the person
20 contracting for the City solid waste collection.

21 (4) Enclosure Plan Review and Approval. The Mayor shall approve
22 plans for design of enclosures for commercial collection points according to
23 the following criteria:

24 (a) The barrier shall provide an attractive enclosure
25 between public streets and solid waste containers.

26 1. While a straight enclosure will usually be
27 sufficient, the Mayor may require up to four sides with a movable gate or door
28 if the Mayor determines that this is necessary to sufficiently diminish the view
29 of the solid waste container from public streets.

30 2. The height of the enclosure shall be not less than
31 the height of the container which is or will be utilized on the site. This height

1 shall be determined by the Plan Reviewer at the time of site plan submittal for
2 building permit.

3 3. The location, design, color, and material of the
4 enclosure shall be compatible with the principal building, the use of the site,
5 and the landscaping thereof.

6 (b) The enclosure shall not interfere with reasonable solid
7 waste collection.

8 (c) The enclosure shall be so constructed that reasonable
9 wear and tear from solid waste collection should not damage it. The
10 enclosure must meet approved City of Albuquerque Solid Waste Enclosure
11 Specifications.

12 (d) The enclosure plan approved under this section may be
13 revoked in the event the type, size, or number of containers used at the site
14 changed or in the event that the enclosure is improperly installed or
15 maintained, so that it does not attractively screen the collection site as
16 intended.

17 (C) *Effective Date for Requirement for Conformance to Site Plans;*
18 *Shielding Collection Points and Removal of Illegal Containers.*

19 (1) Any proposed building or land use which requires commercial
20 collection of refuse, for which a building permit has not been issued or the use
21 began by September 30, 1985 shall be developed and maintained in good
22 condition with refuse collection points in conformance to a site plan submitted
23 and approved according to the provisions of this section.

24 (2) The owner of real property which requires commercial
25 collection of refuse on which there is a collection point which is not covered
26 by division (C)(1) above, is not required to meet the enclosure requirements of
27 this section unless there is a material change in the premises which effects
28 refuse collection; however, all owners of property with commercial collection
29 are encouraged to comply with this section as to enclosures.

30 (3) The requirement for removing illegal collection points on
31 public street right-of-way shall be met not later than December 31, 1985 unless

1 immediate compliance is required through coverage by division (C)(1) above,
2 as set forth in division (D)(2) of this section.

3 (D) *Variances.* In appropriate cases, the Mayor may grant full or partial
4 variances from the requirement for collection point location or enclosure
5 specified elsewhere in this section. Variance from §§ 9-10-1-1 et seq. must be
6 applied for in writing by the owner or person in possession of real property
7 which requires commercial collection of refuse.

8 (1) A variance may be given when the Mayor finds that provision
9 of the normal enclosure:

10 (a) Would not further the purpose of §§ 9-10-1-1 et seq. due
11 to the limited visibility of the collection site; or

12 (b) Would result in an arbitrary and unreasonable taking of
13 property or impose undue economic burden.

14 (2) A variance to allow a commercial collection point on public
15 street right-of-way may be given by the Mayor if he finds that:

16 (a) There is no feasible location for a collection point on the
17 site;

18 (b) Commercial type collection is essential; and

19 (c) The City Traffic Engineer certifies that the location on
20 the public street right-of-way is not a significant traffic or visibility hazard.

21 (3) The Mayor shall not approve a variance which:

22 (a) Would result in a condition injurious to public health or
23 safety; or

24 (b) Is not justified by a weighing of the relative interests of
25 the applicant and the general public.

26 (4) The purpose of §§ 9-10-1-1 et seq. is served by commercial
27 collection containers readily visible from a public street if:

28 (a) The area is zoned C-3 Heavy Commercial, M-1 Light
29 Manufacturing, or M-2 Heavy Manufacturing;

30 (b) The container is near a public street designated as a
31 local street;

1 (c) The site cannot provide a conforming collection site
2 and/or enclosure without unreasonable expense to the property owner; and

3 (d) The conditions of the containers will be maintained in
4 good repair and properly painted.

5 (5) Variances granted shall be based on specific findings, and a
6 written record of such findings and decisions shall be preserved.

7 (6) More detailed guidelines for granting variances shall be
8 developed by the Mayor as part of the rules and regulations authorized by §§
9 9-10-1-1 et seq.

10 (7) The Mayor may revoke a variance when he finds that there has
11 been a material change in the amount or type of refuse or in the use of the
12 site, such that the variance is no longer justified.

13 (8) Any interested person may appeal an administrative decision
14 on a variance to the Zoning Hearing Examiner.

15 (9) The City may by rule adopt fees to pay the City cost of
16 processing such variance requests or appeals.

17 **§ 9-10-1-8 COLLECTION PRACTICES.**

18 (A) *Frequency of Collection.*

19 (1) Residential. Refuse and recyclable material accumulated by
20 residences shall be collected at such times and frequency as deemed
21 necessary by the Mayor.

22 (2) Commercial. Hotels, restaurants, and other such businesses
23 and institutions as deemed necessary by the Mayor shall enter into an
24 agreement for greater frequency of collection.

25 (a) The Mayor shall have the authority to require that more
26 frequent collections be made where necessary to protect the public health.

27 (b) The Mayor shall have the authority to determine when
28 inaccessible containers will be serviced, provided, however, the Mayor has the
29 authority to charge a special fee for such collection.

1 (c) The Mayor, in his or her discretion shall have the
2 authority to charge a special fee for unscheduled or emergency collection
3 (See § 9-10-1-4 (D)).

4 (d) All commercial containers are to be accessible between
5 the hours of 5:00 a.m. and 8:00 p.m., or as otherwise designated by the Mayor.
6 If containers are not readily accessible, the Mayor shall have the authority to
7 charge a special fee for late collection (See § 9-10-1-4 (D)).

8 **(B) *Limitations on Quantity.***

9 (1) Residential. The City shall collect the refuse and recyclable
10 material of each family during a collection period for the standard charge. Any
11 excessive accumulation as determined by the Mayor may require a special
12 collection at an additional fee.

13 (2) Commercial. The City shall collect all refuse which is
14 contained inside the approved container to be serviced for that location. Any
15 excess accumulation outside the designated contracted container shall be
16 collected by a special collection at an additional fee. The refuse must not
17 exceed the container capacity and the refuse container lid must be closed at
18 all times. The Mayor shall have the authority to determine where the
19 compaction of refuse is required.

20 **(C) *Special Solid Waste Disposal.***

21 (1) Infectious Waste. Waste from homes, hospitals, nursing
22 homes, or other places where highly infectious or contagious diseases have
23 prevailed shall not be placed in containers for regular collection. The
24 producers of such waste shall dispose of it in accordance with all applicable
25 regulations. If hazardous or infectious waste is transported without
26 knowledge by the Solid Waste Management Department, any fines and/or
27 associated costs for cleanup will be reimbursed to the City of Albuquerque by
28 the property owner.

29 (2) Highly Flammable or Explosive Solid Waste. Highly flammable
30 or explosive material shall not be placed in containers for regular collection
31 and disposal. The producers of such solid waste shall immediately notify the

1 Mayor who shall direct the proper collection and disposal of such solid waste
2 at the expense of the owner or possessor thereof.

3 (3) Hazardous Waste. Hazardous waste may only be disposed of
4 in accordance with all City, State and Federal regulations. The City further
5 reserves the right to prohibit the disposal of materials otherwise identified or
6 defined as hazardous waste in § 9-10-1-3.

7 (4) Tires. Commercial businesses shall dispose of tires in a
8 container designated for tire disposal only. Any commercial business that
9 places tires in a container designated for residential or commercial refuse will
10 be assessed an additional fee. Containers designated for tire pick up by the
11 City must be compatible with City equipment. Separate tire disposal
12 containers must not contain any solid waste or a penalty will be assessed.
13 See Section 9-10-1-98 and Section 9-10-1-99 below. The City shall not be
14 responsible for procuring or maintaining containers for the disposal of tires.
15 Tire disposal fees will apply.

16 (D) *Collection by Actual Commercial Producers.*

17 (1) Requirements for Vehicles. The actual commercial producers
18 of refuse, the owners of premises upon which such refuse is accumulated who
19 desire personally to collect and dispose of such refuse, or licensed
20 transporters of refuse, and persons who desire to dispose of waste material
21 not included in the definition of refuse shall do so only with compliance with
22 the rules and regulations authorized by §§ 9-10-1-1 et seq. Such collection
23 shall be accomplished through the use of a vehicle provided with a tightly
24 secured cover. Such vehicles shall be operated to prevent offensive odors
25 escaping therefrom and refuse from being blown, dropped, or spilled.

26 (2) Disposal. Disposal of refuse by persons so permitted under
27 this division (D) shall be made at a site authorized by the City.

28 (3) Rules and Regulations. The Mayor shall have the authority to
29 make other such reasonable regulations concerning individual collection or
30 disposal.

1 **(4) Applicable Fees.** Nothing herein shall be construed to exempt
2 such producers or owners from the fees provided herein.

3 **(5) Refuse and Recyclable Material Property of City.** Ownership of
4 refuse and/or recyclable material set out for collection or disposed of in the
5 City Sanitary Landfill shall be vested in the City upon collection or disposal.

6 **(E) *Change Between Residential and Commercial Collection Service.***
7 Notwithstanding any other provisions in §§ 9-10-1-1 et seq., the City may
8 require the person in control of real property to receive a type of collection
9 service other than as defined in §§ 9-10-1-1 et seq., according to the following
10 standards:

11 **(1) Criteria for change between residential and commercial**
12 **collection service shall be as follows:**

13 **(a) Two or more of the following circumstances exist as to**
14 **existing service:**

15 1. The site serviced is unable to comply with
16 requirements of §§ 9-10-1-1 et seq. unless the type of collection is changed;

17 2. The existing collection service cannot conform to
18 all other applicable City ordinances;

19 3. The existing collection service creates a health or
20 safety hazard;

21 4. There have been frequent, substantial amounts of
22 loose refuse around the collection container, evidenced by two or more fines
23 paid or six or more neighborhood complaints; or

24 5. The customer requests the change in service.

25 **(b) In addition, the new class of service would meet all of**
26 **the following criteria:**

27 1. The site serviced will be able to comply with the
28 requirements of §§ 9-10-1-1 et seq.;

29 2. The new collection location conforms with all
30 other applicable City ordinances; and

1 3. The new service would not be likely to create a
2 health or safety hazard.

3 (c) If an owner has eight or less dwelling units or mobile
4 homes on a single lot, it may justify a change from commercial to residential
5 service. The fact that an owner owns additional dwellings on other lots in the
6 vicinity does not normally justify a change from residential to commercial
7 collection service.

8 (2) If the City changes a site from commercial to residential
9 collection, the City shall offer to purchase any privately owned container it had
10 authorized for the commercial collection service. The price offered shall
11 reflect fair market value of the container in its present condition.

12 (3) The owner or person in control of the real property shall be
13 notified of the City's intended change of service at least 30 days in advance of
14 its effective date.

15 (4) The owner or person in control of real property may appeal the
16 proposed collection service change to the City's Zoning Hearing Examiner.
17 The City may by rule adopt a fee to pay the City cost of such an appeal.

18 (F) *Automated Collection Cart Charges.*

19 (1) One automated collection cart will be provided without cost to
20 each residence. Thereafter, if the cart is lost or stolen or destroyed by the
21 resident, a charge to cover the replacement cost of the container will be
22 assessed. The City shall confiscate all carts that have not been assigned to a
23 residence. Unlawful use of an additional cart will result in back charges
24 and/or penalties.

25 (2) A monthly per cart fee will be charged for the use of each
26 additional, ninety-five gallon, automated collection cart. The new charge is
27 effective June 30, 2010. Additional cart charges will be assessed for a period
28 of no less than six months.

29 (G) Rate Appendix. Rates are set by the Solid Waste Management
30 Department, are subject to change, and are published in the Collection and
31 Disposal Rate Appendix to this ordinance.

1 **§ 9-10-1-9 DUMPING, ACCUMULATING, AND SCATTERING OF REFUSE.**

2 **(A) *Dumping.*** No person may discard refuse anywhere outdoors within
3 the boundaries of the City except at a time and place approved for collection
4 of that person's refuse under the terms of §§ 9-10-1-1 et seq. and regulations
5 authorized by said sections or other provisions of this code or ordinances of
6 the City. No person shall place refuse and/or recyclable material in the
7 receptacle of another person without permission of that person.

8 **(B) *Unauthorized Accumulation.*** It shall be unlawful for any person to
9 allow any refuse to collect or accumulate on any lot or other premises within
10 the City of which he is the owner, tenant, lessee, manager, or occupant. Any
11 such unauthorized accumulation or collection is hereby declared to be a
12 nuisance and is prohibited. In the event such person fails or refuses to
13 remove such accumulation or collection of refuse, the City may cause same to
14 be removed at the expense of such person, and such charge shall be a lien
15 upon the property.

16 **(C) *Scattering of Refuse.*** No person shall cast, place, sweep, or deposit
17 anywhere in the City any refuse in such a manner that it may be carried or
18 deposited by the elements upon any street, sidewalk, parkway, sewer, other
19 public place, vacant lot, or into any premises within the City.

20 **(D) *Accumulation of Construction Refuse.*** Refuse resulting from
21 construction of structures may be collected within an active construction site
22 if and only if the refuse is maintained in such a manner that it will not be blown
23 to adjacent properties by the wind.

24 **(E) *Accumulation for Recycling.*** Notwithstanding other provisions of
25 §§ 9-10-1-1 et seq., it is lawful for any person to accumulate and collect
26 rubbish for the purpose of recycling it, provided that any collection point
27 which is available to the public is:

- 28 (1) **Conforming to the Zoning Code;**
29 (2) **Not on public right of way; and**
30 (3) **Constructed so that the rubbish is contained at the collection**
31 **point so as to not become a public nuisance, whether because the rubbish is**

1 blown, because of the collection point's appearance, or for other reasons.
2 Paper collected for recycling shall be in an enclosure with a top or the paper
3 shall be securely bundled.

4 **§ 9-10-1-10 MULTIPLE-FAMILY DWELLING RECYCLING.**

5 **(A) *Requirements for Establishment of Recycling Program.***

6 (1) The responsible party for each multiple- family dwelling of less
7 than 25 units may work with the City to establish a recycling program in
8 accordance with the terms listed herein unless otherwise specified by the
9 Mayor.

10 (2) The responsible party for each multiple- family dwelling of 25 units
11 or more shall establish and manage a recycling collection program in
12 accordance with the terms listed herein unless otherwise specified by the
13 Mayor.

14 (3) The City will be the collection agent for the recycling program.
15 The responsible party shall work with the City to determine the appropriate
16 level of collection service.

17 (4) The responsible party shall notify, in writing, its residents,
18 employees and/or clients, as applicable, that recycling participation is
19 mandatory. Written notification (i.e. letter, newsletter, email notice, etc.) shall
20 be provided within 15 days to all new residents and employees and no less
21 frequently than bi-annually thereafter to all existing residents and employees.
22 The written notification shall set forth the requirements of this article and
23 include at minimum:

- 24 (a) What materials will be recycled.
- 25 (b) How the recyclables are to be prepared.
- 26 (c) Any set-out requirements.
- 27 (d) Location of recycling containers.
- 28 (e) Prohibitions against contamination of recyclables.
- 29 (f) Any other requirements necessary.

30 **(B) *Requirements for Materials to be Collected.***

31 (1) Recyclables shall be properly bundled, packaged, and placed at the

1 collection point, as determined by the Mayor.

2 (2) Recyclable material shall be placed out for pick up and be accessible
3 no later than 6:00 a.m., on the regularly scheduled day unless otherwise
4 specified by the Mayor. Customers who put their recyclable materials out
5 after the truck has been there, or have had their recyclable material blocked or
6 hidden from view by any object such as a vehicle, shall be responsible for
7 storing their recyclable material until their next regular day of pick up, or
8 paying an additional fee as determined by the Mayor for requested collection
9 service.

10 (3) Recyclables will be collected in commingled containers.
11 Commingled containers are the property of the City of Albuquerque.
12 Commingled containers are assigned to a property for the purposes of multi-
13 family dwelling recycling and shall be maintained and cleaned by the
14 responsible party. Commingled containers may not be painted or altered in
15 any way. It is the responsibility of the responsible party to ensure that they
16 commingle their recyclable material. If a commingled container is lost, stolen
17 or damaged, a replacement fee will be assessed.

18 (4) If the commingled container is used for refuse a collection and
19 disposal fee will be charged as per the Collection and Disposal Rates
20 Appendix attached to this ordinance.

21 (C) *Provisions for Recycling Collection Points.* Provisions for recycling
22 collection points shall be as provided in § 9-10-1-7.

23 (D) *Collection Fees.* The monthly fee for collection will be the equivalent of
24 the residential recycling fee times the number of units regardless of
25 occupancy.

26 § 9-10-1-11 COLLECTION FEES.

27 (A) *Residential Collection.* See the Collections and Disposal Rates
28 Appendix attached to this ordinance.

29 (1) A residential monthly basic services charge effective June 30,
30 2010 plus applicable gross receipts and local option taxes is for the following
31 services:

1 (a) **Collection, and disposal of refuse created by residential**
2 **use of the premises;**

3 (b) **Collection and processing of recyclable material;**

4 (c) **Residential large item pickup and graffiti, weed and litter**
5 **removal (Clean Cities Program); and**

6 (2) **A monthly residential environmental needs charge effective**
7 **June 30, 2010 is for the following:**

8 (a) **A collection and disposal program for household**
9 **hazardous wastes and unclaimed dead animal removal which will be**
10 **administered by the City.**

11 (b) **Landfill monitoring, investigation and remediation of**
12 **former City landfills. Such charges shall not be construed to prevent the**
13 **Mayor from imposing reasonable extra charges for special inspection work or**
14 **the removal of excessive amounts of refuse.**

15 (c) **To monitor the landfill methane gas collection systems**
16 **at Cerro Colorado and South Broadway Landfills.**

17 (d) **To address reclamation issues associated with old City**
18 **landfills including the use of alternative methodologies, which could include**
19 **the removal of waste in place by collecting and transporting wastes to the**
20 **Cerro Colorado Landfill.**

21 (3) **The cost of large item pick-up is included in the monthly**
22 **residential collection rates. There shall be no additional charge to collect**
23 **large items such as air conditioners, stoves, dishwashers, washing machines,**
24 **clothes dryers, water heaters, lawn mowers, doors, sinks, toilets, mattresses,**
25 **furniture and televisions.**

26 (4) **Except as approved by the Mayor, multiple dwelling units**
27 **which have been approved to receive automated cart collection services shall**
28 **be subject to applicable collection fees as stated in the Collection and**
29 **Disposal Rates Appendix, and will be assessed a fee for large item pick-up.**
30 **Except as approved by the Mayor, multiple dwelling units with nine or more**
31 **dwelling units shall be subject to commercial rates.**

1 (5) It is further provided that a low income credit of \$2.00 per
2 month shall apply to owner occupied residences who qualify under the current
3 United States Office of Management and Budget income guidelines. The
4 Mayor shall establish procedures regarding certification for the above
5 mentioned credit and shall periodically make administrative changes to the
6 income guidelines, as circumstances require. An interfund transfer shall be
7 made to the Solid Waste Operating Fund from the General Fund in an amount
8 equal to the sum of all credits given to monthly Solid Waste billings in
9 accordance with the solid waste credit provided by §§ 9-10-1-1 et seq.

10 **(B) Commercial Collection.** Hotels, restaurants, other establishments
11 and businesses, institutions, and multiple-unit dwellings receiving commercial
12 type service shall have fees based on the type and frequency of service and
13 the volume of the refuse container required to collect such refuse. The fees
14 are set where applicable, as set forth in the Collection and Disposal Rates
15 Appendix at the end of this Part I. Effective June 30, 2010, these fees shall
16 reflect the actual cost of service from the level in effect immediately prior to
17 that date.

18 **(C) Starting and Stopping Service; Credit.** All premises shall be charged
19 solid waste collection fees except as provided herein:

20 (1) Previously unoccupied residences. New home not previously
21 occupied, including model and show homes, will be charged at the time sold.
22 It shall be the duty of the builder, contractor, or agent to notify the City in
23 writing at the time of the sale.

24 (2) Vacant residential premises. Residential premises which
25 become vacant shall continue to receive charges unless said unoccupied
26 premises meet the following conditions:

27 (a) The service suspension period shall be 90 consecutive
28 days or more;

29 (b) Premise was receiving residential (and not commercial)
30 collection service;

1 (5) Any person making a false statement upon any application or
2 request pursuant to §§9-10-1-1 et seq. shall be guilty of an ordinance violation.

3 (D) *Payment.* All charges shall be payable at the Office of the City
4 Treasurer, City Hall, Albuquerque, New Mexico, or other locations as
5 designated by the Mayor and will become delinquent 15 days following the
6 “due by” date on the customer's utility statement.

7 (E) *Penalty.* A penalty of 1½% per month may be imposed on all
8 delinquent accounts.

9 (F) *Responsibility of Payments, Liens, and Deposits.*

10 (1) The charges provided for herein are the personal
11 responsibility of the owner of the property served; any fee, payment, or fee
12 shifting arrangement with a tenant or any other person is a third-party
13 arrangement between the owner and the other person or entity and is not
14 binding on the City.

15 (2) The City may file a lien on such property for such charges
16 including any interest or penalties accruing on same.

17 (3) In the event the property is sold the original owner shall notify
18 the city as provided herein the date of the transfer of title and the name and
19 address of the new owner.

20 (4) Reasonable deposits may be required of any customer when
21 the Mayor deems it appropriate. Such deposits shall draw reasonable interest
22 as determined by the Mayor.

23 (G) *Discontinuance of Service; Hearing.*

24 (1) The City may cause the water supply to be turned off and
25 discontinue service to the property if any charge provided for herein remains
26 unpaid for a period of 30 days from the “due by” date on the property owner's
27 utility statement. Service may not be discontinued for delinquencies of a
28 previous owner.

29 (2) In order to discontinue service, a written notice shall be sent
30 to the property owner giving the property owner at least 15 days notice of the

1 termination of services and notice of property owner's right to protest the
2 City's action at a hearing before the City Hearing Officer.

3 (3) The property owner must request in writing that a hearing be
4 held and such request must be received by the City of Albuquerque
5 Administrative Hearing Office on or before the date the services are to be
6 terminated. A nonrefundable hearing fee of \$50.00 shall accompany each
7 request for hearing by the City Hearing Officer filed pursuant to this section.
8 At such hearing, the property owner and the Solid Waste Management
9 Department may present evidence. The Hearing Officer may affirm, overrule,
10 or modify the decision to terminate the services. The decision of the Hearing
11 Officer shall be final. In the event a hearing is requested, the services shall
12 not be terminated until and in accordance with the decision of the Hearing
13 Officer.

14 (4) The Mayor shall establish rules or procedures for such
15 hearings and for discontinuance of service not in conflict herewith.

16 (H) *Rate Appendix.* All rates are set by the Solid Waste Management
17 Department, are subject to change, and are published in the Collection and
18 Disposal Rate Appendix to this ordinance.

19 (I) *Legal Remedy.* The City shall have a right to proceed for collection
20 of such unpaid charges in any manner provided by the law for collection of a
21 municipal claim.

22 (J) *Use of City Municipal Landfill and Convenience Centers.*

23 (1) *City Municipal Landfill.*

24 (a) The City Municipal Landfill will accept solid waste from
25 licensed authorized commercial haulers of two tons and over size vehicles
26 and City collection vehicles only, unless otherwise approved by the Mayor.

27 (b) The City Municipal Landfill and convenience centers will
28 not accept hazardous wastes, unauthorized waste, or infectious wastes.

29 (c) The fees for disposal in the City Municipal Landfill after
30 June 30, 2010, are set forth in the Collections and Disposal Rates Appendix.

31 (2) *City Convenience Centers.*

1 (a) Any residential producer of refuse may dispose of same
2 at any City Convenience Center for a fee set forth in the Collections and
3 Disposal Rates Appendix per each individual load plus applicable gross
4 receipts and local option taxes or \$1 per each individual load plus applicable
5 gross receipts and local option taxes. Any uncovered and/or unsecured load
6 will be charged an additional fee set forth in the Collections and Disposal
7 Rates Appendix per individual load plus applicable gross receipts and local
8 option taxes. A load is equivalent to 64 cubic feet (4'X8'X2'). The rate change
9 is effective June 30, 2010.

10 (b) Any business or institution may dispose of commercial
11 refuse, except unauthorized waste, infectious wastes or hazardous waste, at
12 any City Convenience Center for a fee set forth in the Collections and Disposal
13 Rates Appendix per each individual load plus applicable gross receipts and
14 local option taxes. Any uncovered and/or unsecured load will be charged an
15 additional fee as set forth in the Collections and Disposal Rates Appendix per
16 individual load plus applicable gross receipts and local option taxes. A load is
17 equivalent to 64 cubic feet (4'X8'X2'). The rate change is effective June 30,
18 2010.

19 (c) Any vehicle transporting material to any City
20 Convenience Center is limited to a rated capacity of under two tons.

21 (d) Salvaging and scavenging is prohibited at the city
22 landfill, transfer stations, and convenience centers at all times without the
23 written permission of the Mayor.

24 (K) A fuel surcharge may be assessed each month to all refuse
25 collection when the purchase price of diesel fuel exceeds \$2.30 per gallon.

26 (L) The costs to provide current levels of service will be calculated each
27 year and presented to City Council as part of the budget process. Service rate
28 adjustments may be recommended annually, based on controllable and
29 uncontrollable expenses, and must be approved by the City Council.

30 § 9-10-1-12 BURNING OF SOLID WASTE.

1 No solid waste shall be burned within the City except as permitted by the
2 Mayor.

3 **§ 9-10-1-98 ENFORCEMENT.**

4 This ordinance will be enforced in accordance with the provisions of §§ 1-
5 1-98 ROA 1994.

6 **§ 9-10-1-99 PENALTY.**

7 Any person convicted of a violation of the provisions of §§ 9-10-1-1 et seq.
8 or any regulation promulgated hereunder shall be guilty of a misdemeanor and
9 shall be subject to the penalty provisions set forth in § 1-1-99 of this code of
10 ordinances.”

11 **SECTION 2. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
12 clause, word or phrase of this ordinance is for any reason held to be invalid or
13 unenforceable by any court of competent jurisdiction, such decision shall not
14 affect the validity of the remaining provisions of this ordinance. The Council
15 hereby declares that it would have passed this ordinance and each section,
16 paragraph, sentence, clause, word or phrase thereof irrespective of any
17 provision being declared unconstitutional or otherwise invalid.

18 **SECTION 3. COMPILATION.** Section 1 of this ordinance shall be
19 incorporated in and made part of the Revised Ordinances of Albuquerque,
20 New Mexico, 1994.

21 **SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect five days
22 after publication in full.

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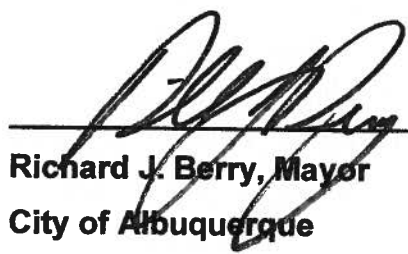
1 PASSED AND ADOPTED THIS 6th DAY OF May 2013
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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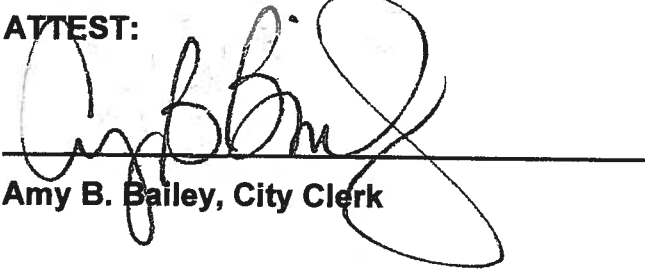
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7 Daniel P. Lewis, President
8 City Council
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12 APPROVED THIS 23rd DAY OF May, 2013
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16 Bill No. O-13-48

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20 Richard J. Berry, Mayor
21 City of Albuquerque
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25 ATTEST:

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28 Amy B. Bailey, City Clerk
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