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**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Richard J. Berry, Mayor

FROM: Jon K. Zaman, Director of Council Services

Jon 9/20/16

SUBJECT: Transmittal of Legislation

Transmitted Herewith is Bill No. F/S O-16-17 Amending The Accountability In Government Ordinance, Chapter 2, Article 10 Of The Revised Ordinances Of Albuquerque (Gibson), which was passed at the Council meeting of September 7, 2016, by a vote of 9 FOR AND 0 AGAINST.

In accordance with the provisions of the City Charter, your action is respectfully requested.

JKZ:dm
Attachment
9/9/16

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ALBUQUERQUE CITY CLERK

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

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

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

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

11 **§ 2-10-3 DEFINITIONS.**

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

14 **AUDIT. An independent, objective assurance activity designed to add**
15 **value and improve the City's operations by using a systematic, disciplined**
16 **approach to evaluate the effectiveness of operations, internal control,**
17 **compliance, and governance processes. An audit may be planned, expanded**
18 **scope, or a special audit. Audits result in written reports with**
19 **recommendations for improvement and responses from auditees.**

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

23 **COMMITTEE. The Accountability in Government Oversight Committee.**

24 **CONTRACTORS. All city contractors.**

25 **CITY AUDITOR. The Director of the Office of Internal Audit.**

26 **EMPLOYEE. All city employees.**

27 **EXPANDED SCOPE AUDIT. An audit whose original scope is modified by**
28 **the City Auditor or the Committee based on circumstances and findings**
29 **uncovered during the audit.**

30 **INSPECTOR GENERAL. The Inspector General created pursuant to the**
31 **Inspector General Ordinance (§§ 2-17-1 et seq.).**

32 **OFFICIAL. The Mayor and Councilors.**

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1 PUBLISHED REPORT. An audit report that has been distributed in final form
2 to the auditees, to the Mayor and Chief Administrative Officer, and to the City
3 Council. A published audit report is available on request to the public.

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

7 STRATEGIC REVIEWS. Reportable non-audit work including but not limited
8 to bench marking, best practices, and compliance reviews requested by an
9 official or the City Auditor and at the discretion of the City Auditor.

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

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

15 (B) The Office of Internal Audit shall independently administer its own
16 budget, and supervise its own staff in compliance with the City's Merit
17 Ordinance and contractual services policies and procedures.

18 (C) The Office of the City Attorney shall advise and represent the Office of
19 Internal Audit, except that the Office of Internal Audit may, in consultation with
20 the City Attorney, select an independent legal counsel to advise and represent
21 the Office as needed in the event of a conflict of interest that the City Attorney
22 determines cannot otherwise be cured internally.

23 (D) The Office of Internal Audit shall comply with all City ordinances and
24 policies dealing with administrative functions including but not limited to
25 those dealing with personnel, the merit system, and procurements.

26 (E) The Office of Internal Audit shall employ such staff as necessary to
27 carry out its functions as prescribed by this Article, including but not limited
28 to the City Auditor, professional audit staff and other staff as may be
29 necessary, subject to budget sufficiency and City personnel policies and
30 procedures. The City Auditor has sole authority to hire, promote, set
31 compensation for, discipline or discharge the staff of the Office of Internal
32 Audit in a manner consistent with the Merit System Ordinance and the Grade
33 Series Pay Plan.

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1 (F) The Office of Internal Audit shall provide staff support to the Committee
2 and administrative staff support to the Office of the Inspector General.

3 (G) Neither the City Auditor nor any employee of the Office of Internal Audit
4 shall engage in any partisan political activities or the political affairs of the city
5 during work hours.

6 **§ 2-10-5 CREATION OF COMMITTEE; DUTIES; POWERS; MEMBERSHIP.**

7 (A) The "Accountability in Government Oversight Committee" is created.
8 The Committee shall consist of five members who are residents of the city and
9 who are not employed by the City, or in a direct contractual relationship or
10 similar business relationship with the City. At least one Committee member
11 shall be a CPA, at least one Committee member shall have a law enforcement
12 or law background and at least one Committee member shall be a professional
13 management consultant. The Mayor and one Councilor appointed annually by
14 the Council President shall be nonvoting ex officio members. The Mayor and
15 the appointed Councilor may send designees to the Committee meetings. The
16 committee may request the attendance of other City personnel or auditees.

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

28 (C) The Committee shall meet at least four times per year, but may also
29 meet monthly or upon the call of the Chair or a majority of its members.

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

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

3 (F) If an Official is the subject of an investigation, then the ex officio
4 members or their designees, shall be recused from all meetings where that
5 particular investigation is being discussed and they shall not have access to
6 the investigative file during the pending investigation.

7 (G) The Committee is a management committee and not a public board,
8 commission or committee as specified by §§ 2-6-1-1 et seq. and not subject to
9 the Open Meetings Act. The Committee is not formed to formulate public
10 policy nor has authority to formulate public policy been delegated to the
11 Committee. The Committee and its members are subject to the City Charter,
12 Article XII Code of Ethics.

13 (H) The Committee shall annually recommend the Office of Internal Audit
14 and Inspector General budget to the Mayor and Council through the normal
15 City budget process for City Departments in an amount sufficient for both
16 offices to fulfill their respective function, which proposal may include a salary
17 adjustment for the City Auditor or the Inspector General.

18 (I) The Committee may provide the City Auditor and the Inspector General
19 with guidance, priorities and potential areas for investigations and audits. The
20 Committee may also lend advice to the City Auditor and the Inspector General
21 regarding technical issues that may arise.

22 (J) The Committee shall not prohibit the City Auditor or the Inspector
23 General from initiating, carrying out or completing and reporting on any audit,
24 investigation or strategic review. If a majority of the Committee members
25 finds that an audit, investigation or strategic review is questionable, then the
26 Committee may issue a cautionary statement to the City Auditor or the
27 Inspector General, as appropriate.

28 (K) The Committee shall review any audit, investigatory or strategic review
29 reports at each meeting. If the committee approves a report then the City
30 Auditor or Inspector General shall immediately cause the report to become a
31 published report. If the committee does not approve a report, then the City
32 Auditor or Inspector General shall cause the report to become a published
33 report no sooner than fifteen (15) business days from the date of the

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1 committee's review or consideration. The committee may draft a cautionary
2 statement for inclusion with the report during this fifteen (15) day period
3 which, if provided to the City Auditor or Inspector General within this
4 timeframe, will be made part of the published report.

5 (L) The Committee shall prepare a job description, specify qualifications for
6 applicants, work with the Director of the Human Resources Department to
7 advertise for the position and develop the applicant search procedure and
8 make recommendations to the Council on the selection of the City Auditor and
9 the Inspector General. The committee shall apply human resources best
10 practices to its applicant search relating to advertisement periods, job posting
11 locations including with national industry-oriented groups or associations,
12 application review processes, interview processes, and contacting of
13 references and prior employers as may be recommended by the Director of
14 Human Resources or other reliable sources.

15 (M) Any discipline of the City Auditor or the Inspector General, as provided
16 by § 3-1-6 ROA 1994, shall be by the Committee. The City Auditor and the
17 Inspector General shall report to the Committee for approval of vacation, sick,
18 emergency and city business leave.

19 **§ 2-10-6 SELECTION AND RETENTION OF CITY AUDITOR.**

20 (A) (1) The Committee, through its staff, shall accept applications from
21 candidates, interview candidates, and shall submit to the City Council the
22 names of the three candidates (or more in the event that candidates are tied in
23 ranking) that it finds to be the best qualified to be City Auditor indicating its
24 ranking, together with a general description of its selection process, and the
25 Council shall appoint the City Auditor from the three. The Committee's
26 recommendation to Council shall be based on the candidates' integrity,
27 capability for strong management and demonstrated ability in accounting,
28 auditing, financial analysis, law, management analysis, public administration,
29 investigation, criminal justice administration or other closely related fields.

30 (2) Upon the expiration of four years from the date of the City Auditor's
31 last appointment by the City Council, the Committee shall submit three
32 candidates to the Council for its consideration for appointment to the position
33 of City Auditor, or in lieu of recommending three candidates to the Council,

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1 the Committee may recommend to the Council the reappointment of the
2 incumbent City Auditor. Should the Council decline to reconfirm the
3 incumbent City Auditor, the Council President will notify the Committee that it
4 needs to provide the Council with three alternate candidates pursuant to the
5 provisions of Subsection A(1).

6 (B) If a current or prior City employee or official is appointed to the position
7 of City Auditor, such person shall not audit or assist in the audit of the
8 department or agency where such person previously served or was employed
9 for a period of four years from the last day of such prior employment or
10 service. Any audits of such department or agency shall be referred by the City
11 Auditor to an independent third party auditor who shall serve as an
12 independent proxy for the City Auditor, vested with the full authority of the
13 City Auditor only for the purposes of the specific audit(s) so assigned, and
14 who shall report to the Committee relating to the audit in the same manner as
15 the City Auditor would under this Ordinance. If a current or prior city official,
16 contractor, or employee is one of the three recommended to the City Council
17 for possible appointment, the Committee shall submit to the Council a
18 statement describing its assessment of possible conflicts or appearances of
19 conflicts, if any, that may result during the fulfillment of duties as City Auditor
20 if that candidate is appointed.

21 (C) As a condition of retention, the City Auditor must obtain certification as
22 a Certified Public Accountant or Certified Internal Auditor through the
23 appropriate entity within two years of appointment. Other professional
24 certifications, such as certified fraud examiner are recommended.

25 (D) Prior to submission of the final three candidates to the City Council, the
26 three City Auditor candidates shall be fingerprinted and shall provide two
27 fingerprint cards or the equivalent electronic fingerprints to the Committee to
28 obtain the candidate's Federal Bureau of Investigation record. Records and
29 related information shall be privileged and shall not be disclosed to anyone
30 other than Committee members. The city shall pay for the cost of obtaining the
31 Federal Bureau of Investigation records.

32 (E) The City Auditor may be removed from office only upon an affirmative
33 vote of two-thirds (2/3) of the members of the Committee, or upon the City

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1 Council's decision to not reconfirm the City Auditor pursuant to Subsection
2 A(2) of this Section. Within five days of removal of the Director the Committee
3 shall report the reasons for that removal to the Mayor and the Council.

4 **§ 2-10-7 CITY AUDITOR'S DUTIES; RESPONSIBILITIES; AUTHORITY;**
5 **ADMINISTRATIVE SUBPOENA POWER.**

6 (A) If the City Auditor detects apparent or potential violations of law or
7 apparent instances of misfeasance or nonfeasance by an official or auditee,
8 the City Auditor shall report the irregularities in writing to the Committee. If
9 the irregularity is criminal in nature, the City Auditor shall immediately refer
10 the irregularity to the appropriate prosecuting authority and notify the
11 Inspector General. The City Auditor shall not accept complaints related to
12 discrimination or labor law matters, or other matters that are the subject of
13 pending litigation.

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

18 (C) The City Auditor shall promulgate regulations to establish procedures
19 for the Office of Internal Audit.

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

27 (E) The City Auditor shall maintain a complete file of each audit report and
28 each report of other investigations and strategic reviews made under
29 legislative or special Committee authority for six years from the date that the
30 audit or review is closed, or longer if required by law. The file should include
31 audit work papers and other supportive material directly pertaining to the
32 report. Records may be retained in electronic format at the City Auditor's
33 election.

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1 (F) In cases where the City Auditor deems it appropriate because of an
2 audit, investigation, or strategic review, the City Auditor may refer
3 opportunities for increased efficiency to the Office of Management and Budget
4 to work with respective departments on management and process
5 improvement.

6 § 2-10-8 PROFESSIONAL STANDARDS.

7 (A) The City Auditor shall adhere to generally accepted government
8 auditing standards in conducting its work and will be considered independent
9 as defined by those standards.

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

14 § 2-10-9 PUBLIC RECORDS; CONFIDENTIALITY.

15 (A) The City Auditor shall maintain the confidentiality of any public records
16 that are made confidential by law and is subject to the same penalties as the
17 custodian of those public records for violating confidentiality statutes.

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

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

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

27 (E) Published reports are public records except that the City Auditor shall
28 delay the publication of reports when criminal conduct is found and the
29 Inspector General or appropriate law enforcement authority is pursuing an
30 investigation and release of the report might jeopardize further investigation.

31 An audit report that has been delayed pursuant to this section shall be
32 published promptly at the end of the condition giving rise to the delay.

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

5 **§ 2-10-10 AUDIT DIVISION; SCOPE OF AUDITS.**

6 (A) The Office of Internal Audit shall conduct audits and strategic reviews
7 of all auditees to independently determine whether:

8 (1) The city, state or federal law authorizes implemented activities and
9 programs;

10 (2) The objectives intended by city, state or federal law are efficiently and
11 effectively accomplished in the implementation of activities and programs;

12 (3) The expenditure of funds complies with applicable laws;

13 (4) The revenues are properly collected, deposited and accounted for;

14 (5) Resources, including funds, property and personnel, are adequately
15 safeguarded, controlled and used in a faithful, effective and efficient manner;

16 (6) Financial and other reports fairly and fully disclose all information as
17 required by law necessary to evaluate and ascertain the nature and scope of
18 programs and activities;

19 (7) Management established operating and administrative procedures and
20 practices, accounting internal control systems and internal management
21 controls are adequate and functioning as intended; and

22 (8) City policies, budgets, goals and objectives are fully implemented.

23 (B) At an official's request, the City Auditor shall initiate special audits or
24 strategic reviews subject to the provisions of § 2-10-12.

25 **§ 2-10-11 ANNUAL AUDIT PLAN.**

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

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

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1 (C) This plan may be amended during the year after review with the
2 Committee.

3 (D) In the selection of audit areas, the determination of audit scope and the
4 timing of audit work, the City Auditor should consult with federal and state
5 auditors and independent auditors so that the desirable audit coverage is
6 provided and audit effort may be properly coordinated.

7 (E) The City Auditor shall make reports at least quarterly to the Committee
8 on the status of the work plan.

9 **§ 2-10-12 SPECIAL AUDITS; AUDIT REPORTS.**

10 (A) In all cases, the City Auditor shall, within 48 hours of implementation,
11 notify the Committee when a special audit or strategic review is being
12 undertaken.

13 (B) A draft of the report shall be forwarded to the auditees and the Chief
14 Administrative Officer for review and comment before it is provided to the
15 Committee for pre-publication review. The auditees, including departments
16 whose assistance is needed in order to accomplish any audit
17 recommendation, shall respond to the City Auditor, in writing, within 14 days
18 of receipt of the audit report.

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

24 (D) Auditees' comments to the preliminary draft may be utilized to amend
25 the report if appropriate. If the preliminary audit report is amended, the
26 auditees will be given a copy of the amended draft, and the auditees will be
27 given seven to 14 days, as determined by the City Auditor and the auditees, to
28 respond to the amended draft of the audit report.

29 (E) The City Auditor shall include the auditees' responses in the audit
30 report.

31 **§ 2-10-13 REPORTS TO THE COMMITTEE.**

32 (A) Each investigation, audit and strategic review shall result in a written
33 final report.

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1 (B) The City Auditor shall submit at least five copies of each report to the
2 Committee and shall retain a copy as a permanent record for six (6) years from
3 the date it became a published report or longer if required by law.

4 (C) If appropriate, the report shall contain the professional opinion or
5 conclusions of the City Auditor.

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

7 (1) A precise statement of the scope encompassed by the audit;

8 (2) A statement that the audit was performed in accordance with generally
9 accepted government auditing standards;

10 (3) A statement that an examination for compliance with applicable laws,
11 policies and regulations was conducted, and a presentation of the findings
12 associated with that examination;

13 (4) A statement of significant audit findings, including a statement of the
14 underlying causes, evaluative criteria used and the current and prospective
15 significance of the findings;

16 (5) A statement that internal control systems were examined and a report
17 of any material weaknesses found in the internal control systems;

18 (6) Statements of response submitted by the auditees relevant to the audit
19 findings;

20 (7) A concise statement by the auditees of the corrective actions
21 previously taken or contemplated as a result of the audit findings and a
22 timetable for their accomplishment; and

23 (8) Recommendations for additional necessary or desirable action.

24 **§ 2-10-14 ANNUAL REPORTING.**

25 (A) The City Auditor shall annually report to the Council and the Mayor
26 regarding his activities.

27 (B) Within 60 days of the end of each fiscal year, the City Auditor shall
28 issue an annual report to the Committee that separately lists audit reports,
29 strategic review reports and other assistance efforts completed during the
30 fiscal year.

31 (C) The Office of Internal Audit shall provide copies of the annual report
32 upon request.

33 **§ 2-10-15 CONTRACT AUDITORS, CONSULTANTS, AND EXPERTS.**

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1 The City Auditor may obtain the services of certified public accountants,
2 qualified management consultants, certified fraud examiners, forensic
3 auditors or other professional experts necessary to perform the functions of
4 the Office of Internal Audit. Contractors performing an audit shall not have
5 any financial interest in the affairs of the auditees, officials or employees. The
6 City Auditor shall coordinate and monitor auditing performed by persons
7 under contract to the City Auditor.

8 **§ 2-10-16 PENALTY; COOPERATION; RETALIATION PROHIBITED.**

9 (A) All city officials, employees and contractors shall provide the City
10 Auditor full and unrestricted access to all city offices, employees, records,
11 information, data, reports, plans, projections, matters, contracts, memoranda,
12 correspondence, electronic data, property, equipment and facilities and any
13 other materials within their custody. At the City Auditor's request, an official,
14 employee or contractor shall prepare reports and provide interviews. If an
15 official, employee, vendor or contractor fails to produce the requested
16 information, the City Auditor shall notify the Committee and make written
17 request to the Chief Administrative Officer for his assistance in causing a
18 search to be made and germane exhibits to be taken from any book, paper or
19 record excepting personal property. The Chief Administrative Officer shall
20 require the officials, employees, vendors or contractors to produce the
21 requested information.

22 (B) Every city contract, bid, proposal, application or solicitation for a city
23 contract and every application for certification of eligibility for a city contract
24 or program shall contain a statement that the individual understands and will
25 abide by all provisions of the Accountability in Government Ordinance.

26 (C) No person shall retaliate against, punish or penalize any other person
27 for complaining to, cooperating with or assisting the City Auditor in the
28 performance of his office.

29 (D) Each and every violation of this article is a criminal violation subject to
30 the provisions of § 1-1-99 ROA 1994.

31 (E) Any official or employee who violates the Accountability in Government
32 Ordinance may be subject to discipline as may be specified in the Merit
33 System Ordinance or any applicable collective bargaining agreement.”

1 **Section 2. SEVERABILITY CLAUSE.** If any section, paragraph, sentence, clause,
2 word or phrase of this ordinance is for any reason held to be invalid or
3 unenforceable by any court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining provisions of this ordinance. The Council
5 hereby declares that it would have passed this ordinance and each section,
6 paragraph, sentence, clause, word or phrase thereof irrespective of any provisions
7 being declared unconstitutional or otherwise invalid.

8 **Section 3. COMPILATION.** The amendments set forth in Section 1 above shall
9 amend, be incorporated in and made part of the Revised Ordinances of
10 Albuquerque, New Mexico, 1994.

11 **Section 4. EFFECTIVE DATE.** This ordinance shall take effect five days after
12 publication by title and general summary.

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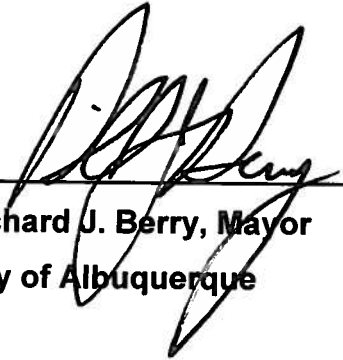
1 PASSED AND ADOPTED THIS 7th DAY OF September, 2016
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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8 **Dan Lewis, President**
9 **City Council**

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13 APPROVED THIS 29th DAY OF September, 2016

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15 **Bill No. F/S O-16-17**

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20 **Richard J. Berry, Mayor**
21 **City of Albuquerque**

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25 **ATTEST:**

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28 **Natalie Y. Howard, City Clerk**

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