

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

THE ASSOCIATION OF COMMERCE AND INDUSTRY, NAIOP, AND THE NEW
MEXICO RESTAURANT ASSOCIATION,

Plaintiffs,

v.

Case No. D-202-CV-2017-02314

THE CITY OF ALBUQUERQUE; THE CITY COUNCIL
OF THE CITY OF ALBUQUERQUE, NEW MEXICO; KEN
SANCHEZ, ISAAC BENTON, KLARISSA PEÑA, BRAD
WINTER, DAN LEWIS, PAT DAVIS, DIANE GIBSON,
TRUDY JONES, AND DON HARRIS, in their capacities as
Albuquerque City Councilors;

Defendants,

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND
APPLICATION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

1. Plaintiffs, The Association of Commerce and Industry, NAIOP, and the New Mexico Restaurant Association, file this Complaint pursuant to the Constitution of New Mexico Article IV, Section 16 (Subject of bill in title, one subject only); NMSA 1978 Section 44-6-1, *et seq.* (Declaratory Judgment Act); NMSA 1978 Section 44-2-1 *et seq.* (Mandamus statutes) and New Mexico Constitution Article X, Section 6 (Municipal home rule). Plaintiffs bring this action and seek the relief requested because no adequate remedy at law exists for Plaintiffs.

2. Plaintiffs seek to have the proposed Healthy Workforce Ordinance (“Sick Leave Ordinance”) (Exhibit 1) declared invalid for being in violation of the New Mexico Constitution and to have the 2012 amendments to the Albuquerque Minimum Wage

Ordinance (“the Minimum Wage Ordinance”) declared unenforceable for having been placed on the ballot in violation of the New Mexico Constitution. Both ordinances violate the Constitution of New Mexico Article IV, Section 16 (Subject of bill in title, one subject only) commonly referred to as “logrolling”. Logrolling is the presentation of double or multiple propositions to the voters with no chance to vote on the separate questions so that unpopular, unworkable or extreme new laws will be voted on, with a potentially popular idea. Logrolling is criticized because it is a form of voter fraud.

3. Plaintiffs:

A. Plaintiff Association of Commerce and Industry is (“ACI”) is a 501(C) (6) trade organization founded in New Mexico to promote pro-business policies that grown the economy. The Association, which serves as the state chamber of commerce, has approximately 500 total members throughout the state, including approximately 300 members in Albuquerque. Membership in the Association is open to any individual or business that pays membership dues. Association members in Albuquerque have a significant interest in ensuring that the election laws are properly carried out and are entitled to the protection of Constitution of New Mexico Article IV, Section 16 forbidding logrolling and the voter fraud caused thereby. ACI members will be injured by the Sick Leave Ordinance if it is enacted. ACI members in and outside of Albuquerque presently suffer significant economic harm under the Minimum Wage ordinance and will suffer additional significant economic harm if the proposed Sick Leave Ordinance is enacted.

B. Plaintiff NAIOP is a Commercial Real Estate Development Corporation and is a 501(c) (6) trade organization established in 1981 as a Chapter of the

National Association. NAIOP has 265 total members with 259 members in Albuquerque. NAIOP represents professions involved in the development, building, ownership, finance and maintenance of commercial real estate properties. Membership in NAIOP is open to any individual or business that pays membership dues. NAIOP members will be injured by the Sick Leave Ordinance if it is enacted. NAIOP members in Albuquerque have a significant interest in ensuring that the election laws are properly carried out and are entitled to the protection of Constitution of New Mexico Article IV, Section 16 forbidding logrolling and the voter fraud caused thereby. NAIOP members in and outside of Albuquerque presently suffer significant economic harm under the Minimum Wage Ordinance and will suffer additional significant economic harm if the proposed Sick Leave Ordinance is enacted.

C. Plaintiff New Mexico Restaurant Association is a non profit organization founded in 1946 to represents the food service industry in New Mexico. The Association has about 1100 members throughout the state including about 500 members in the City of Albuquerque. Membership in the association is open to any firm or establishment actively engaged in the food service business, including restaurants, cafes, and diners, purveyors of goods and services to restaurants. The association's members are subject to the City's Minimum Wage Ordinance and would be subject to the proposed Sick Leave Ordinance if it were enacted. The Associations' members in Albuquerque have a significant interest in ensuring that the election laws are properly carried out and are entitled to the protection of Constitution of New Mexico Article IV, Section 16 forbidding logrolling and the

voter fraud caused thereby. Association members will be injured by the Sick Leave Ordinance if it is enacted. Association members in and outside of Albuquerque presently suffer significant economic harm under the Minimum Wage ordinance and will suffer additional significant economic harm if the proposed Sick Leave Ordinance is enacted.

4. Defendant City of Albuquerque is a New Mexico municipal corporation located in Bernalillo County, New Mexico (hereafter, the “City”).

5. The City is a home rule municipality granted its powers pursuant to New Mexico Constitution Article X, Section 6 and NMSA 1978 Section 3-15-7.

6. The City is a Mayor-Council form of government pursuant to NMSA 1978 Chapter 3, Article 12.

7. Defendant City Council of the City of Albuquerque, New Mexico is the legislative branch of the municipal government of the City of Albuquerque. Defendants Ken Sanchez, Isaac Benton, Klarissa Pena, Brad Winter, Dan Lewis, Pat Davis, Diane Gibson, Trudy Jones and Dona Harris are the nine City Councilors of the City Council. They are named parties because they have the authority pursuant to City Charter Article IV, Section 8 to pass an election resolution to place voter initiative legislation on a City election ballot (hereinafter, the “City Council”).

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action and the parties named herein.

9. This Court has jurisdiction to issue a declaratory judgment pursuant to NMSA 1978 Sections 44-6-1 through-44-6-15 (the Declaratory Judgment Act) and New Mexico Constitution Article VI, Section 13.

10. This Court has jurisdiction to issue a writ of mandamus pursuant to Article VI, Section 13 of the New Mexico Constitution and NMSA1978 Section 44-2-1, *et. seq.* (writ of mandamus).

11. Venue is proper in the Second Judicial District because the City is within the District.

COUNT I. THE PROPOSED PLACEMENT OF THE SICK LEAVE ORDINANCE ON A CITY BALLOT IS IN VIOLATION OF THE NEW MEXICO CONSTITUTION PROHIBITING ‘LOGROLLING’, ALSO KNOWN AS “A FORM OF VOTER FRAUD”

12. Plaintiffs incorporate by reference all preceding allegations.

13. In accordance with the procedures in City Charter Article III, Section 3, proponents of the Sick Leave Ordinance did not propose their Sick Leave Ordinance for review, consideration, amendment, public notice and debate as to all of the various proposed prohibitions, penalties and procedures, but rather submitted a voter initiative ordinance to the City Council on July 21, 2016 proposing a city ordinance they entitled the “Healthy Workforce Ordinance.” Exhibit 1.

14. The proposed Sick Leave Ordinance is more onerous, extreme and expensive to implement than any other sick leave ordinance in the entire country.

15. If enacted, the Sick Leave Ordinance will require employers, including very small businesses and all non-profits and charities with any physical premises within the City to provide employees, as qualified under the provisions of the ordinance, with paid sick leave and contains a significant number of other requirements of the employer that are not interdependent and are identified hereinafter.

15. The placement of a proposed voter initiative ordinance on a ballot is accomplished by an election resolution passed by the City Council.

16. The Sick Leave Ordinance is a proposed voter initiative ordinance that has not yet been placed on any upcoming City Election by an Election Resolution passed by the City Council.

17. The City Council passed election resolution enactment Number R-2015-058 on August 1, 2016 that called for placing the Healthy Workforce Ordinance on the November 2016 state general election ballot in Bernalillo County.

18. The Bernalillo County Commissioners would not agree to place the Healthy Workforce Ordinance on the November 2016 state general election ballot for Bernalillo County.

19. The Second Judicial District Court denied the Motion for Preliminary Injunction and/or Mandamus filed in Cause D 202 CV 2016 5539 on September 13, 2016 confirming the decision of the County Commissioners not to place the Healthy Workforce Ordinance on the November 2016 general election ballot.

20. The following provisions of the Sick Leave Ordinance are not interdependent and therefore logroll many provisions into one proposition in violation of Article IV, Section 16 of the New Mexico Constitution:

- (1) Employers are classified as either small or large with small employers having less than 40 employees. The threshold of 40 includes employees that work outside of the City as well as part time and temporary employees (Section 13-16-2). Unlike most other sick leave ordinances, no exception for any small business is included. Charities and non-profits could have been exempted, as well.
- (2) Qualified employees are paid sick time at the same hourly rate paid while working in addition to receiving all other employee benefits during sick leave provided by the employer (Section 13-16-2).
- (3) The following are allowable reasons for using sick leave in Section 13-16-3 (A): an employee or employee's family member's mental or physical illness, injury or health condition; including medical diagnosis, care,

treatment, or recovery; for preventive medical care; for closure of the employee's place of business or family member's school or place of public health reasons; or for absence necessary due to domestic violence, sexual assault or stalking suffered by the employee or employee's family member, provided the leave is to obtain medical or psychological treatment, relocate, prepare for or participate in legal proceedings, or obtain related services.

- (4) Employees accrue a minimum of one hour of paid sick time for every 30 hours worked (Section 13-16-3(B)).
- (5) Sick time accrues on the very first day of employment, be it part-time, seasonal or not. (Section 13-16-3(B)).
- (6) Section 13-16-3 (C) provides that paid sick time shall be carried over to the following but does not limit the amount of time that may be carried over.
- (7) Section 13-16-3 (E) allows an employer to require reasonable documentation that paid sick time has been used for a covered purpose only if the employee uses 3 or more consecutive paid sick days. An employer may not require that the documentation explain the nature of any medical condition or the details of the domestic violence, sexual assault, or stalking. If an employer chooses to require documentation for paid sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation.
- (8) The employer is required to retain all records for four years and make available for inspection and copying upon request by the Department or the employee. Failure to maintain records shall give rise to a rebuttable presumption the employer has violated this Ordinance and the fact finder may rely on employee's reasonable estimates in calculating damage (Section 13-16-5).
- (9) The Department (the City) or any individual or any entity a member of which is aggrieved by a violation of this article may bring a civil action individually or as a class action under state law in a court of competent jurisdiction within four years from the date the alleged violation occurred. Upon prevailing the plaintiff or plaintiffs shall recover all appropriate legal or equitable relief, the costs and expenses of suit and reasonable attorney's fees, and liquidated damages calculated at three times the value of the unpaid sick time accrued and in the case of retaliation, the plaintiff shall recover actual damages, including but not limited to back pay. (Section 13-16-6).

- (10) Any employer found in violation shall also be liable for a civil penalty of \$50 per week for each separate violation, not to exceed \$500.
- (11) A plaintiff who prevails in a claim under the ordinance shall have the right to reinstatement (Section 13-16-6).
- (12) The City shall implement and enforce this article, shall have investigation and inspection authority as provided in 29 U.S.C section 211(a), shall enforce this article on behalf of an aggrieved worker upon receipt of an individual worker complaint and/or on a workplace-wide basis when the investigation reveals a general policy or practice of noncompliance and shall promulgate appropriate guideline or rules for such purposes. The City shall have the power to impose penalties payable to the City for violation\’s of this article and grant an employee(s) or former employee(s) all appropriate relief (Section 13-16-6).
- (13) An employer shall not intimidate, retaliate, discipline, discharge suspend assign to less favorable duties refuse to hire, reduce pay or hours, refuse to assign additional hours, report an employee or an employee’s family member to any law enforcement agency, or take or threaten any adverse action whatsoever against an employee because the employee has exercised rights protected under this ordinance or has in good faith alleged violation of this ordinance, whether mistakenly or not. There shall be a rebuttable presumption of a violation of this section whenever an employer takes any adverse action against a person who within 90 days exercised rights protected under this ordinance or has in good faith alleged violations of this ordinance whether mistakenly or not. An employer shall not require an employee to find a replacement worker as a condition of using paid sick time or count use of paid sick time in a way that will lead to any adverse employment action (Section 13-16-4).
- (14) This chapter may be amended by the City Council without a vote of the people as regards the implementation or enforcement thereof, in order to achieve the purpose of this Chapter, but not in a manner that alters the effective date or lessens the substantive requirements of this chapter or its scope of coverage (Section 13-16-11) (emphasis added).

21. The fourteen options listed in the previous paragraph are not interdependent and present significant, separate issues, the bulk of which would never withstand public debate, amendment or consideration in their present form.

22. The very lengthy and detailed propositions proposed to be placed on a future ballot is an “all or nothing” proposal. Voters who favor a simple, fair sick leave

obligation for large companies but not for small companies or non-profits, will not be able to vote their actual preferences.

23. Presenting the fourteen propositions previously listed in the single submission on a future ballot will render the success of one proposition dependent upon the success of the other propositions which is clearly unfair to the voters and not conducive to a free and untrammelled expression of public sentiment as to the merits of either.

24. The proposed Healthy Workforce Ordinance constitutes logrolling which is a form of voter fraud.

25. The violation of the single subject rule of New Mexico Constitution Article IV, Section 16 voids the proposed Sick Leave Ordinance in its entirety.

COUNT II. THE ALBUQUERQUE MINIMUM WAGE ORDINANCE WAS ENACTED IN VIOLATION OF ARTICLE IV, SECTION 16 THE NEW MEXICO CONSTITUTION PROHIBITING “LOGROLLING”, ALSO KNOWN AS “THE VICE OF DOUBLENESS”

26. Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

27. Article IV, Section 16 of the New Mexico Constitution states:

The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void.

28. Ole Education Fund filed a petition for a Writ of Mandamus to require the City to place the minimum wage petition (ordinance) on the November 6, 2012 ballot. In an order filed September 11, 2012 in Second Judicial District Case No. CV 2012-0812 the District Court denied the petition for the Writ of Mandamus stating that because the

proposed voter initiative presented more than one issue for voters to decide with only one vote, it was invalid on its face.

29. The District court found as follows:

The proposition requires voters to consider four distinctly different options presented as one question. The four options are (a) to raise the minimum wage from \$7.50 to \$8.50 per hour; (b) to prospectively tie the minimum wage to increase in the consumer price index; (c) to pay [employers of][sic] tipped employees at least forty five percent of the minimum wage in cash wages beginning in 2013; and (d) to pay tipped employees at least sixty percent of the minimum wage in cash wages beginning in 2014.

The proposition on the ballot was an “all or nothing” proposal. Voters who favor one option but not the others either must vote for the options with which they did not agree in order to cast a vote for the option they prefer or, must vote against an option they favored in order to prevent the options with which they disagree from passing.

To present both propositions in a single submission, thus rendering the success of one dependent upon the success of the other, or the defeat of the one dependent upon the defeat of the other, is clearly unfair to the voters and not at all conducive to a free and untrammelled expression of public sentiment as to the merits of either. It may compel the voter, in order to get what he earnestly wants, to vote for something which he does not want. Presenting more than one unrelated question to the voter as one question has been called the “the vice of doubleness” and is “universally condemned” as a species of voter fraud.

30. The New Mexico Supreme Court issued a Writ of Superintending Control in Case No. 33,805 dated September 12, 2012 vacating the District Court’s order denying the

petition for writ of mandamus and ordering the minimum wage initiative to be placed on the November 6, 2012 ballot. In doing so, the Court stated that there was not enough time to issue a writ to the Albuquerque City Council to schedule a public meeting to exercise its discretion as to when to place the initiative on the ballot.

31. The Supreme court ordered that “**given the unorthodox procedure used in this case, the writ shall be issued without prejudice to any party challenging the minimum wage ordinance should it be passed by the voters**” (emphasis added).

32. The Albuquerque Minimum Wage Ordinance, with a summary that was materially inaccurate, was passed in the October 2012 City of Albuquerque municipal election and is codified as Chapter 13, Article 12, Sections 13-12-1-through 13-12-6 ROA 1994 (hereafter, the “Minimum Wage Ordinance”).

33. Although the original minimum wage ordinance was enacted in 2006, the provisions that violate Article IV, Section 16 of the New Mexico Constitution were included for the first time in the proposition amending the Minimum Wage Ordinance in the 2012 election.

34. The violation of the New Mexico Constitution, Article IV, Section 16 consisted of having four options in the proposed ordinance that was placed on the ballot. They were:

1. to raise the minimum wage from \$7.50 to \$8.50 per hour;
2. to prospectively tie the minimum wage to increase in the consumer price index;
3. to pay [employers of][sic] tipped employees at least forty five percent of the minimum wage in cash wages beginning in 2013; and

4. to pay tipped employees at least sixty percent of the minimum wage in cash wages beginning in 2014.

35. The four options listed above are not interdependent.

36. The proposition on the ballot was an “all or nothing” proposal. Voters who favored one or more options but not the remaining option or options either had to vote for the options with which they did not agree in order to cast a vote for the option or options they preferred or had to vote against an option they favored in order to prevent the options with which they disagree from passing.

37. Presenting the four propositions previously listed in the single submission on the 2012 ballot rendered the success of one dependent upon the success of the other which is clearly unfair to the voters and not conducive to a free and untrammelled expression of public sentiment as to the merits of either. Compounding the logrolling fraud was the additional problem that the summary of the Ordinance contained an error, which materially misrepresented the effect of the Ordinance.

38. The Minimum Wage Ordinance on the 2012 ballot constituted logrolling which is a form of voter fraud.

39. The violation of the single subject rule of New Mexico Constitution Article IV, Section 16 voids the Minimum Wage Ordinance in its entirety.

COUNT III. THE PROPOSED SICK LEAVE ORDINANCE EXCEEDS THE POWERS GRANTED TO A HOME RULE MUNICIPALITY IN VIOLATION OF THE NEW MEXICO CONSTITUTION.

40. Plaintiffs incorporate by reference all preceding allegations as if fully set forth herein.

41. New Mexico Constitution Article X, Section 6 D sets forth the authority granted to a home rule municipality. It does not extend to a home rule municipality the power to modify state criminal statutes.

42. Healthy Workforce Ordinance section 13-16-4 requires that an employer shall not report an employee or an employee's family member to any law enforcement agency because the employee has exercised rights protected under this ordinance or has in good faith alleged violation of this ordinance, whether mistakenly or not. This is an amendment to a criminal statute by a civil ordinance and is the exercise of a power a home rule municipality has not been given.

43. The reference in Section 13-16-4 to reporting an employee or employee's family to any law enforcement agency is inclusive of all matters, it creates an exception to NMSA 1978 Section 30-24-3 in that an employer may be a person with information about a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings. Such employer will be left with the choice of not reporting a crime and being charged as an accessory under NMSA 1978 Section 30-1-13 or exposing the employer to all sorts of expenses and penalties for violating the employee's rights or the employee's family's rights under the Sick Leave Ordinance.

44. In addition, the employee who asserts his rights under the Sick Leave Ordinance to prevent an employer from reporting to a law enforcement officer or agency may be, by taking such action, intimidating an employer who has information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings, placing the employee in the position of violating Section 30-24-3.

45. Another conflict will occur when an employee files a complaint under the Healthy Workforce Ordinance against an employer because the employer has reported the employee or the employee's family. This action could be considered as retaliation against the employer, thereby violating the provisions of Section 30-24-3 B.

46. Section 30-24-3 provides:

A. Bribery or intimidation of a witness consists of any person knowingly:
(3) intimidating or threatening any person or giving or offering to give anything of value to any person with the intent to keep the person from truthfully reporting to a law enforcement officer or any agency of government that is responsible for enforcing criminal laws information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings.

B. Retaliation against a witness consists of any person knowingly engaging in conduct that causes bodily injury to another person or damage to the tangible property of another person, or threatening to do so, with the intent to retaliate against any person for any information relating to the commission or possible commission of a felony offense or a violation of conditions of probation, parole or release pending judicial proceedings given by a person to a law enforcement officer.

C. Whoever commits bribery or intimidation of a witness is guilty of a third degree felony.

D. Whoever commits retaliation against a witness is guilty of a second degree felony.

47. Section 1-1-99 ROA 1994 provides for the penalty provide for a petty misdemeanor as follows:

Any person who violates any provision of this code for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding \$500 or by imprisonment not exceeding 90 days or both unless a different specific penalty is provided. Each separate violation shall constitute a separate offense and, upon conviction, each day of violation shall constitute a separate offense.

48. The Sick Leave Ordinance section 13-16-6 provides for penalties greater than the penalty provided for a petty misdemeanor, contrary to New Mexico Constitution Article

X, Section 6 D. Section 13-16-6 allows the City to impose unspecified amounts in penalties payable to the City, costs and expenses of suit, reasonable attorney's fees, liquidated damages of three times the value of the unpaid sick time accrue, actual damages not limited to back pay, reinstatement and fifty dollars per week for each separate violation not to exceed five hundred dollars.

49. Sections 1-1-99 ROA 1994 and Healthy Workforce Ordinance section 13-16-6 combine to create penalties in excess of a petty misdemeanor.

COUNT IV. ENACTMENT OF ORDINANCES BY VOTER INITIATIVE IS IN VIOLATION OF THE NEW MEXICO CONSTITUTION.

50. Plaintiffs incorporate by reference all preceding allegations.

51. New Mexico Constitution Article X, Section 6 D provides:

A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter. This grant of powers shall not include the power to enact private or civil laws governing civil relationships except as incident to the exercise of an independent municipal power, nor shall it include the power to provide for a penalty greater than the penalty provided for a petty misdemeanor. No tax imposed by the governing body of a charter municipality, except a tax authorized by general law, shall become effective until approved by a majority vote in the charter municipality.

52. NMSA 1978 Section 3-15-7 provides:

The charter may provide for any system or form of government that may be deemed expedient and beneficial to the people of the municipality, including the manner of appointment or election of its officers, the recall of the officers and the petition and referendum of any ordinance, resolution or action of the municipality; provided, that the charter shall not be inconsistent with the constitution of New Mexico, shall not authorize the levy of any tax not specifically authorized by the laws of the state and shall not authorize the expenditure of public funds for other than public purposes. All bylaws, ordinances and resolutions lawfully passed and in force in the municipality before the adoption of the charter shall remain in force until amended or repealed.

53. Home Rule Municipalities are limited to the recall of its officers and the petition and referendum of any ordinance, resolution or action of the municipality and have not been given the power to provide for voter initiative ordinances to be placed on a ballot.

54. NMSA 1978 Section 3-14-18 provides for voter initiated measures for the Commission-manager municipality but does not include within its provisions the mayor-council form of government.

55. City Charter Article III, Section 3 allows voter initiative measures to be placed on a ballot.

56. No provision of the New Mexico Constitution or any New Mexico Statute authorizes a home rule mayor-council form of government to allow for voter initiated ordinances to be placed on a ballot.

COUNT V: THE ALBUQUERQUE MINIMUM WAGE ORDINANCE EXCEEDS THE CITY'S HOME RULE POWER AND THE TERRITORIAL REACH OF THE CITY.

57. Plaintiffs incorporate by reference all proceeding allegations.

58. The Albuquerque Minimum Wage Ordinance requires an *employer* to pay minimum wage to any employee.

59. The definitions in the Albuquerque Minimum Wage Ordinance provide in §13-12-2 ROA 1994:

Employee is a person who performs work for an employer for monetary compensation for at least two hours in a given week within the municipal limits of the City.

Employer is any entity who is required to have a business license or business registration from the City of Albuquerque and employs any employee.

60. The Business Registration Ordinance requires an annual business registration fee for each place of business located in the City, §13-1-3 ROA 1994 and provides in the definition section (§13-1-2 ROA 1994):

PLACE OF BUSINESS. The premises, whether it be a personal residence, main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting of business. In the event there is no such location, but the business is transacted at the location of the buyer, then the general sales area shall be considered a "Place of business". Unless a construction contractor has at least one permanent location within the city, "Place of business" includes a construction site, located therein.

ENGAGING IN BUSINESS. Persons operating, conducting, doing, carrying on, causing to be carried on, or pursuing any business, profession, occupation, trade, pursuit or activity for the purpose of profit and who are required to obtain a New Mexico Taxpayer Identification Number.

61. §13-12-3 ROA 1994 requires that employers shall pay all employees no less than the minimum wage for each hour worked within the municipal limits of the City.

62. The impermissible impact of the Albuquerque Minimum Wage Ordinance on employers outside the City:

A. The definition of *place of business* in the Business Registration Ordinance is overly broad, resulting in any employer located outside the City having to pay City minimum wage to each of its employees that work within the City at least 2 hours in a given week for each such hour worked within the City and such employer is required to meet all the other requirements of the City Minimum Wage Ordinance. The *location of the buyer* clause in §13-1-2 ROA 1994 includes every business transaction where the product or service is received within the City without limitation. Employers doing business outside the City that have no place of business in the City [and have a New Mexico taxpayer identification number]

would be subject to the Minimum Wage Ordinance as to each employee involved in any product or service and possibly any activity related thereto that goes to the location of the buyer within the City. The provisions of the Ordinance are so broad that even an employer shipping a product into the City can be subject to the provisions of the Minimum Wage Ordinance. This extraterritorial exercise of regulation over businesses adversely impacts employers throughout New Mexico and is thereby beyond the Home Rule powers of the City.

B. The City's Minimum Wage Ordinance is not narrowly crafted to prevent an identifiable harm to City residents. Rather, the Ordinance imposes specific requirements on employers wherever in the world they may be located for an employee's presence in the City that may be de minimus. The ordinance attempts to not only regulate those employers whose employees work in the City full time or even on a regular part time basis but also seeks to impose its requirements on employers whose employees work in the City for as little as two hours per week. The broad requirements of the Ordinance are not directed to any single industry or subgroup, but rather apply broadly to virtually any employer anywhere in the state that allowed employees to transact business within the City. Transaction of business would include providing services in, attending business meetings in, delivering to, or telecommuting from within the City. New Mexico employers include national and international companies that provide services in the aero space, computer and telecommunication industries and defense contractors, to name just a few. Many have employees who work all over the state, visiting multiple job sites within a single day, some of which are in

Albuquerque. Calculating the minutes an employee takes to meet, call, text, or drive to a customer in the City imposes a burden on the employer that far outweighs the interest of the City in imposing its minimum wage requirement as to employees that have an incidental relationship to the City.

C. The Minimum Wage Ordinance is not limited to the internal concerns of the City. Businesses based throughout New Mexico and even in other states and countries come within the purview of the Ordinance if they have employees who work at least 2 hours in the City during a week. Whether or not the Ordinance is primarily concerned with employees within the City, many businesses, including members of the Plaintiffs New Mexico Restaurant Association and Association of Commerce and Industry, are located outside the City but employ those who work at least 2 hours during a week within the City. The Ordinance improperly expands the City's Home Rule powers outside of its limits and beyond its own internal concerns, thereby rendering the ordinance invalid.

COUNT VI. THE PROPOSED HEALTHY WORKFORCE ORDINANCE EXCEEDS THE CITY'S HOME RULE POWERS AND TERRITORIAL REACH OF THE CITY.

63. Plaintiffs incorporate by reference all proceeding allegations.

64. The proposed Healthy Workforce Ordinance requires and employer to pay employees accrued paid sick leave, §13-16-3.

65. The definitions in the proposed Healthy Workforce Ordinance provide in §13-16-2:

Employee is anyone hired by an employer for monetary compensation for at least 56 hours in a year within the municipal limits of the City.

Employer is any entity as any entity as defined in §13-12-2 including any nonprofit entity with a physical premises within the City. §13-12-2 defines

Employer as any entity who is required to have a business license or business registration from the City of Albuquerque and employs any employee.

A *small employer* is one that employs fewer than 40 employees including **all employees whether or not they perform work within the City** (emphasis added).

66. The Business Registration Ordinance requires an annual business registration fee for each place of business located in the City, §13-1-3 ROA 1994 and defines *place of*

business **and** *Engaging in business*, full text of each term is set forth in paragraph 60.

67. The impermissible impact of the Proposed Healthy Workforce Ordinance on employers outside the City:

A. Employers who have no place of business in the City will be considered *large employers* even though the number of employees working in the City is below 40 because all employees, whether working in the City or not, are counted when determining whether an employer is a small or large employer. As a result, the proposed Healthy Workforce Ordinance impacts the employer with no place of business in the City based on the employer's business structure that is unrelated to any activities of the employer in the City or any interest the City may have.

B. The proposed Sick Leave Ordinance is not narrowly crafted to prevent an identifiable harm to City residents. Rather, the Ordinance imposes specific requirements on employers wherever in the world they may be located for an employee's presence in the City that may be *de minimus*. The Ordinance does not attempt to regulate only those companies whose employees work in the City full time or even on a regular part time basis but rather seeks to impose its requirements on employers whose employees work in the City for about 65 minutes per week (56 hours in a year). The broad requirements of the Ordinance

are not directed to any single industry or subgroup, but rather apply broadly to virtually any employer anywhere in New Mexico that allows employees to transact business within the City. Transaction of business would include providing services in, attending business meetings in, delivering to, or telecommuting from within the City. New Mexico employers include national and international companies that provide services in the aero space, computer, and telecommunication industries and defense contractors, to name just a few. Many have employees who work throughout the state, visiting multiple job sites within a single day, some of which are in Albuquerque.

Although state of New Mexico employees are exempt from the proposed Healthy Workforce Ordinance, other governmental employers are not exempt nor are employers who are contractors with Los Alamos and Sandia National Laboratories. Calculating the minutes an employee takes to meet, call, text, or drive to a customer in the City imposes a burden on the employer that far outweighs the interest of the City in imposing the Sick Leave Ordinance as to employees that have an incidental relationship to the City.

C. The broad definition of *place of business* in the Business Registration Ordinance results in any employer located outside the City having to pay City sick leave pay to each of its employees that work within the City as little as 56 hours in a year (about 65 minutes a week) for each such hour worked within the City and such employer is required to meet all the other requirements of the proposed Healthy Workforce Ordinance, including such matters as the employer being required to provide notice to each employee on the first day of employment

and posting such notice in a conspicuous place in each establishment where employees are employed, maintaining payroll records for each employee showing the weekly hours worked, wages paid and sick time accrued and used in each pay period and printing such information in the written receipt required in “NMSA § 50-4-2”.

The *location of the buyer* clause in §13-1-2 ROA 1994 includes every business transaction where the product or service is received within the City. Employers doing business outside the City that have no place of business in the City [and have a New Mexico taxpayer identification number] would be subject to the proposed Healthy Workforce Ordinance as to each employee involved in any product or service that goes to the location of the buyer within the City. The provisions of the Ordinance are so broad that even an employer shipping a product into the City can be subject to the provisions of the Sick Leave Ordinance. This extraterritorial exercise of regulation over employers outside the City adversely impacts employers throughout New Mexico and is thereby beyond the powers of the City including its powers under Home Rule.

D. The proposed Sick Leave Ordinance is not limited to the internal concerns of the City. Businesses based all over the state and even in other states and countries would come within the purview of the Ordinance if they have employees who work at least 56 hours in the City during a (calendar) year. Whether or not the Ordinance is primarily concerned with employees within the City, many employers, including members of the Plaintiffs New Mexico Restaurant Association, NAIOP and Association of Commerce and Industry are located

outside the City and employ those who work within the City as few as 56 hours in a year. The Ordinance improperly expands the City's powers outside of its limits and beyond its own internal concerns, thereby rendering the ordinance invalid.

APPLICATION FOR PRELIMINARY INJUNCTION

68. Plaintiffs incorporate by reference all proceeding allegations.

69. Plaintiffs, pursuant to New Mexico Rules of Civil Procedure Rule 1-066, respectfully submit the following Application for Preliminary Injunction enjoining the City and the City Council from implementing and enforcing the proposed Healthy Workforce Ordinance and the Minimum Wage Ordinance during the pendency of this action.

The Minimum Wage Ordinance

70. Plaintiffs are entitled to a preliminary injunction to prevent significant, irreparable damage to the businesses they operate by the minimum wage requirements that are being imposed by Defendants upon Plaintiffs at this time under the Minimum Wage Ordinance. Plaintiffs currently subject to the Minimum Wage Ordinance presently pay wages pursuant to the Minimum Wage Ordinance, an ordinance that was enacted in violation of Article IV, Section 16 of the New Mexico Constitution which prohibits logrolling.

71. The injury to Plaintiffs outweighs any damage the preliminary injunction might cause Defendants. Defendants have no direct damages that will result from the issuance of the preliminary injunction requested herein. To the extent Defendants pay City minimum wage to City employees who would otherwise not be paid an amount as high as City minimum wage, Defendants may also benefit from the issuance of the preliminary injunction of further implementing and enforcing the Minimum Wage Ordinance.

72. The issuance of a preliminary injunction enjoining the enforcement and implementation of the Minimum Wage Ordinance during the pendency of this action will not be adverse to the public's interest. The public's interest is diverse and includes not only the interests of individuals who may benefit from the Minimum Wage Ordinance but also include the general population, including Plaintiffs and other similarly situated employers adversely affected by the Minimum Wage Ordinance. The general public is adversely impacted by the violation of their Constitutional rights to be protected from voter fraud including the logrolling that occurred in the passage of the Minimum Wage Ordinance. The general public is also adversely economically affected by fewer services and higher prices and elimination of jobs caused by the Minimum Wage Ordinance. For these reasons, the issuance of a preliminary injunction would further the public interest.

73. There is a substantial likelihood Plaintiffs will prevail on the merits as to the injunction concerning the Minimum Wage Ordinance. Home rule authority does not give the City power to act in violation of Constitution of New Mexico requirements, including the logrolling prohibition and extending its regulations beyond City boundaries.

The Proposed Healthy Workforce Ordinance

74. Plaintiffs are entitled to a preliminary injunction to prevent significant, irreparable damage to the businesses they operate in the event the provisions of the proposed Sick Leave Ordinance are enacted and imposed on Plaintiffs. The proposed Sick Leave Ordinance, if enacted, would be in violation of Article IV, Section 16 of the New Mexico Constitution which prohibits logrolling.

75. The injury to Plaintiffs outweighs any damage the preliminary injunction might cause Defendants. Defendants have no direct damages that will result from the issuance

of the preliminary injunction requested herein. Defendants will benefit from the issuance of the preliminary injunction in that they will not have to bear the expense of placing the proposed Sick Leave Ordinance that is in violation of the Constitutional prohibition of log rolling and the other Constitutional violations alleged in this Complaint. To the extent Defendants would have to provide additional benefits to City employees who would otherwise not receive such benefits, Defendants may also benefit from the issuance of the preliminary injunction of further implementing and enforcing the proposed Healthy Workforce Ordinance. The City and City taxpayers would benefit avoiding the creation of another legal department to address claims, class actions and retaliation claims and the associated attorney fees that would be claimed by employees claiming a violation.

76. The issuance of a preliminary injunction enjoining the placement of the proposed Sick Leave Ordinance on any ballot during the pendency of this action will not be adverse to the public's interest. The public's interest is diverse and includes not only the interests of individuals who may benefit from the proposed Sick Leave Ordinance but also include the general population, including Plaintiffs and other similarly situated employers that will be adversely affected by the proposed Ordinance. The general public will be adversely impacted by the violation of their Constitutional rights to be protected from voter fraud including the logrolling that will occur if the proposed Healthy Workforce is placed on a ballot during the pendency of this action. The public interest includes preventing the expenditure of City funds on the costs of adding the proposed Ordinance on a ballot during the pendency of this action only to have the placement of

the proposed ordinance declared unconstitutional thereafter. For these reasons, the issuance of a preliminary injunction would further the public interest.

77. There is a substantial likelihood Plaintiffs will prevail on the merits as to the injunction. Home rule authority does not give the City power to act in violation of Constitution of New Mexico requirements, including the logrolling prohibition and extending its regulations beyond City boundaries.

RELIEF REQUESTED

Plaintiffs request the following relief:

A. That the Court issue a preliminary injunction enjoining the City and City Council from further implementing and enforcing the Minimum Wage Ordinance during the pendency of this action.

B. That the Court permanently enjoin the City and City Council from further implementing and enforcing the Minimum Wage Ordinance.

C. That the Court issue a declaratory judgment that the 2012 Minimum Wage Ordinance is in violation of New Mexico Constitution Article IV, Section 16 for having had more than one subject in the proposition on the ballot containing the Minimum Wage Ordinance and/or for exceeding the powers granted to the City and City Council by the New Mexico Constitution and statutes in placing the Minimum Wage Ordinance on the ballot.

D. That the Court permanently enjoin the City and City Council from placing the proposed Sick Leave Ordinance (Healthy Workforce Ordinance) on any ballot.

E. That the Court issue a declaratory judgment that proposed Healthy Workforce Ordinance to be in violation of New Mexico Constitution Article IV, Section

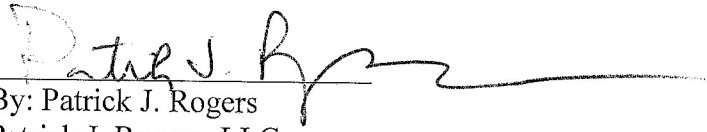
16 for having more than one subject in the proposition that would be placed on any future ballot to approve or disapprove the proposed Ordinance and for exceeding the powers granted to the City and City Council by the New Mexico Constitution and statutes by placing the Healthy Workforce Ordinance on the ballot.

F. That the Court issue a declaratory judgment that the City and City Council do not have the power to place voter initiated voter referendums on any ballot.

G. That no security should be required of Plaintiffs.

H. That the Court grant Plaintiff any other and further relief that the Court deems just and proper.

Respectfully Submitted,



By: Patrick J. Rogers
Patrick J. Rogers, LLC
20 First Century Plaza, Suite 725
Albuquerque, New Mexico 87102
505-983-3335
patrogers@patrogerslaw.com

**CITY of ALBUQUERQUE
TWENTY SECOND COUNCIL**

COUNCIL BILL NO. R-16-82

ENACTMENT NO. R. 2016.058

SPONSORED BY: Patrick Davis

RESOLUTION

1
2 **CONCERNING A SPECIAL ELECTION TO BE HELD IN THE CITY OF**
3 **ALBUQUERQUE AT THE NEXT CITY GENERAL ELECTION; TO SUBMIT TO**
4 **THE VOTERS OF THE CITY OF ALBUQUERQUE AN ORDINANCE PROPOSED**
5 **PURSUANT TO ARTICLE III, SECTION 3, THE DIRECT LEGISLATION**
6 **PROVISION OF THE CITY CHARTER, AT THE NEXT GENERAL ELECTION TO**
7 **BE HELD ON NOVEMBER 8, 2016 TO APPROVE OR DISAPPROVE THE**
8 **PROPOSED ORDINANCE AS SET FORTH HEREIN; PRESCRIBING OTHER**
9 **DETAILS IN CONNECTION WITH THE SPECIAL MUNICIPAL ELECTION.**

10 **WHEREAS, the City of Albuquerque City Charter (the "Charter") authorizes**
11 **direct legislation by voter initiative provided that certain minimum**
12 **requirements are satisfied, including that a minimum number of registered**
13 **voters have signed the petition; and**

14 **WHEREAS, on July 21, 2016 the City Clerk filed a certification with the City**
15 **Council certifying that the requisite number of signatures were obtained and**
16 **verified as required by the Charter to submit the proposed ordinance set forth**
17 **below (the " Proposed Ordinance") to the voters of the City of Albuquerque;**
18 **and**

19 **WHEREAS, as set forth in the City Charter, when an election is required**
20 **pursuant to the "direct legislation by voter initiative" process, such an**
21 **election on the issues must be held at the next general election or regular**
22 **municipal election; and**

23 **WHEREAS, Section 3-8-35 NMSA 1978, a portion of the Municipal Election**
24 **Code, states that when a special election is required by law, an election**
25 **resolution shall be adopted by the governing body calling for the election and**

1 shall state, in part, the purpose for calling the election, the date of the election,
2 the questions to be submitted to the voters, and whether paper ballots or
3 voting machines will be used in the election; and

4 WHEREAS, the Charter requires that a Special Election be held at the next
5 General Election, and this resolution shall serve as the election resolution
6 required by Section 3-8-35 NMSA 1978.

7 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
8 ALBUQUERQUE:

9 SECTION 1. On November 8, 2016, a special municipal election (the
10 "Special Election") shall be held in Albuquerque, New Mexico. The City Clerk
11 is instructed to coordinate with the Bernalillo County Clerk to place the
12 following Proposed Ordinance on the ballot, and the qualified voters of the
13 City of Albuquerque shall be permitted to vote "for" or "against" the Proposed
14 Ordinance:

15 **SUMMARY OF THE PROPOSED ORDINANCE**

16 Proposing to enact the Albuquerque Healthy Workforce
17 Ordinance such that, beginning 90 days after enactment: First,
18 Albuquerque employers must allow employees to accrue sick
19 leave at the rate of one hour of leave per 30 hours worked.
20 Second, employees may use sick leave for their own or a family
21 member's illness, injury, or medical care, or for absences related
22 to domestic violence, sexual assault or stalking. Third, employers
23 with 40 or more employees must allow each employee to use up
24 to 56 hours of accrued sick leave each year, and employers with
25 fewer than 40 employees must allow each employee to use up to
26 40 hours of accrued sick leave each year. Fourth, employers
27 must notify employees of their rights and maintain records. The
28 ordinance also provides for public enforcement, private right of
29 action, and liquidated damages and penalties for noncompliance
30 or retaliation.

31

32

PROPOSED ORDINANCE

1 **An initiative Ordinance of the City of Albuquerque Amending**
2 **Title 13 of the Albuquerque Municipal Code to Allow Employees**
3 **to Accrue and Use Sick Leave; Establishing Procedures for**
4 **Notice, Recordkeeping, and Enforcement.**

5 **WHEREAS, approximately 49% of private sector workers and**
6 **77% of part-time workers in Albuquerque lack paid sick time,**
7 **which compels them to work when they should be recuperating**
8 **from illness or injury and increases the risk of passing illness to**
9 **others.**

10 **BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF**
11 **ALBUQUERQUE:**

12 **“§ 13-16-1. SHORT TITLE**

13 **This ordinance may be cited as the “Albuquerque Healthy**
14 **Workforce Ordinance.”**

15 **§ 13-16-2. DEFINITIONS**

16 **CITY.** The City of Albuquerque.

17 **DEPARTMENT.** The Office of the City Attorney, unless the mayor
18 designates a different agency.

19 **DOMESTIC PARTNER.** A person with whom another person
20 maintains a household and a mutual committed relationship, without a
21 legally recognized marriage.

22 **EMPLOYEE.** Any person an employer suffers or permits to perform
23 work, or hires with the expectation of performing work, for monetary
24 compensation for at least 56 hours in a year within the municipal limits
25 of the city, including on a part-time, seasonal or temporary basis.

26 **EMPLOYER.** An EMPLOYER is as defined in Section 13-12-2 of this
27 Code or any nonprofit organization, partnership, association,
28 corporation, or charitable trust with a physical premises within the City
29 of Albuquerque. EMPLOYER shall not include the State of New Mexico
30 or any employee thereof.

31 **FAMILY MEMBER.** A spouse or domestic partner; a child, sibling,
32 parent, grandparent, grandchild, or legal ward or guardian of the

1 employee or of the employee's spouse or domestic partner (whether of
2 a biological, foster, adoptive or step relationship), and the spouses or
3 domestic partners of these individuals; a person to whom the
4 employee stands or stood in loco parentis; or any other individual
5 related by blood or affinity whose close association with the employee
6 or employee's spouse or domestic partner is the equivalent of a family
7 relationship.

8 **LARGE EMPLOYER.** An employer that is not a small employer as
9 defined herein.

10 **PAID SICK TIME.** Time that is compensated at the same hourly rate
11 and with the same benefits, including health care benefits, as the
12 employee normally earns during hours worked and is provided by an
13 employer to an employee for the purposes described in section 13-16-
14 3 of this article, but in no case shall the hourly wage be less than that
15 provided in Chapter 13, Article 12 of the Albuquerque Code of
16 Ordinances.

17 **SMALL EMPLOYER.** An employer of fewer than forty (40) individual
18 employees. In determining the number of employees, all employees
19 shall be counted whether they are full-time, part-time or temporary
20 employees and whether or not they perform work within the City. When
21 the number of employees fluctuates in any year, the number of
22 employees shall be determined by the number of individuals employed
23 in the previous year.

24 **§ 13-16-3. PAID SICK TIME**

25 (A) An employer shall provide employees accrued paid sick time for:
26 An employee or employee's family member's mental or physical
27 illness, injury or health condition; including medical diagnosis, care,
28 treatment, or recovery; for preventive medical care; for closure of the
29 employee's place of business or family member's school or place of
30 care for public health reasons; or for absence necessary due to
31 domestic violence, sexual assault or stalking suffered by the employee
32 or employee's family member, provided the leave is to obtain medical

1 or psychological treatment, relocate, prepare for or participate in legal
2 proceedings, or obtain related services.

3 (B) Employees shall accrue a minimum of one hour of paid sick time
4 for every 30 hours worked. Employees of large employers cannot use
5 more than 56 hours of paid sick time in a year, and employees of small
6 employers cannot use more than 40 hours of paid sick time in a year,
7 unless the employer's policy provides for a higher limit. Paid sick time
8 shall begin to accrue on the first day of employment. Employees shall
9 be entitled to use accrued paid sick time beginning on the 90th
10 calendar day following the first day of employment or the effective date
11 of this law, whichever is later, unless the employer's policy provides
12 that employees may use accrued time earlier. Employees exempt from
13 overtime requirements under federal and state law will be assumed to
14 work no more than 40 hours in each work week for purposes of paid
15 sick time accrual.

16 (C) Paid sick time shall be carried over to the following year. If an
17 employee is transferred but remains employed by the same employer,
18 or if a successor employer replaces the original employer, or if an
19 employee separates from employment but is rehired by the same
20 employer within 12 months, the employee is entitled to all previously
21 accrued paid sick time, unless it was paid out. An employer may, but is
22 not obligated to, loan paid sick time to an employee in advance of
23 accrual by such employee or pay out unused accrued paid sick time
24 when an employee separates from employment.

25 (D) An employer with a paid leave policy that meets or exceeds the
26 requirements of this Ordinance is not required to provide additional
27 paid sick time or in any way reduce the benefits provided to
28 employees.

29 (E) An employer may require reasonable documentation that paid sick
30 time has been used for a covered purpose only if the employee uses 3
31 or more consecutive paid sick days. An employer may not require that
32 the documentation explain the nature of any medical condition or the

1 details of the domestic violence, sexual assault, or stalking. All
2 information an employer obtains related to the employee's reasons for
3 taking paid sick time shall be treated as confidential and not disclosed
4 except with the permission of the affected employee. If an employer
5 chooses to require documentation for paid sick time, the employer is
6 responsible for paying all out-of-pocket expenses the employee incurs
7 in obtaining the documentation.

8 **§ 13-16-4. EXERCISE OF RIGHTS PROTECTED; RETALIATION**
9 **PROHIBITED.** An employer shall not intimidate, retaliate, discipline,
10 discharge, suspend, assign to less favorable duties, refuse to hire,
11 reduce pay or hours, refuse to assign additional hours, report an
12 employee or an employee's family member to any law enforcement
13 agency, or take or threaten any adverse action whatsoever against an
14 employee because the employee has exercised rights protected under
15 this Ordinance or has in good faith alleged violations of this Ordinance,
16 whether mistakenly or not. There shall be a rebuttable presumption of
17 a violation of this section whenever an employer takes any adverse
18 action against a person who, within 90 days, exercised rights protected
19 under this Ordinance or has in good faith alleged violations of this
20 Ordinance, whether mistakenly or not. An employer shall not require
21 an employee to find a replacement worker as a condition of using paid
22 sick time or count use of paid sick time in a way that will lead to any
23 adverse employment action.

24 **§ 13-16-5. NOTICE AND RECORDS.** On or before the effective
25 date of this Ordinance, the Department shall make available on its
26 website a summary notice to employees in English and Spanish of
27 each provision of this Ordinance. Employers shall provide this notice to
28 each employee on the first day of employment, and shall post it in a
29 conspicuous place in each establishment where employees are
30 employed. Employers shall maintain payroll records for each employee
31 showing the weekly hours worked, wages paid, and amount of paid
32 sick time accrued or used each pay period, and shall print this

1 information in the written receipt required by NMSA § 50-4-2. All
2 records shall be retained for four years and made available for
3 inspection and copying upon request by the Department or the
4 employee. Failure to maintain records shall give rise to a rebuttable
5 presumption that the employer has violated this Ordinance, and the
6 fact finder may rely on employee's reasonable estimates in calculating
7 damages.

8 **§ 13-16-6. ENFORCEMENT.** The Department shall implement and
9 enforce this article, shall have investigation and inspection authority as
10 provided in 29 U.S.C. section 211(a), shall enforce this article on
11 behalf of an aggrieved worker upon receipt of an individual worker
12 complaint and/or on a workplace-wide basis when the investigation
13 reveals a general policy or practice of noncompliance, and shall
14 promulgate appropriate guidelines or rules for such purposes. The
15 Department shall have the power to impose penalties payable to the
16 city for violations of this article and to grant an employee(s) or former
17 employee(s) all appropriate relief. The Department shall maintain
18 confidential the identity of any complainant provided, however, that
19 with the authorization of such person, the Agency may disclose his or
20 her name and identifying information as necessary to enforce this
21 Ordinance or for other appropriate purposes. The Department or any
22 person or any entity a member of which is aggrieved by a violation of
23 this article may bring a civil action individually or as a class action
24 under state law in a court of competent jurisdiction within four years
25 from the date the alleged violation occurred. Upon prevailing, the
26 plaintiff or plaintiffs shall recover all appropriate legal or equitable relief,
27 the costs and expenses of suit and reasonable attorney's fees, and
28 liquidated damages calculated at three times the value of the unpaid
29 sick time accrued; and in the case of retaliation, the plaintiff shall
30 recover actual damages, including but not limited to back pay, and
31 shall have a right to reinstatement or other appropriate relief. Any
32 employer found to be in violation of this article shall also be liable for a

1 civil penalty of fifty dollars per week for each separate violation, not to
2 exceed five hundred dollars per employee.

3 **§ 13-16-7. RELATIONSHIP TO OTHER REQUIREMENTS.**

4 (A) This article shall not be construed as creating or imposing any
5 requirement in conflict with, nor to preempt or otherwise limit or affect
6 the applicability of, any other law, regulation, requirement, policy, or
7 standard that provides for more generous compensation, rights,
8 benefits, or protections. Nothing contained in this article prohibits an
9 employer from establishing more generous policies than those
10 established under this Ordinance.

11 (B) This article shall not be construed to diminish or impair the rights or
12 obligations of an employee or employer under any valid contract,
13 collective bargaining agreement, employment benefit plan or other
14 agreement providing more generous paid sick time to an employee
15 than required herein. Employers subject to this Ordinance may by
16 collective bargaining agreement provide that this Ordinance shall not
17 apply to employees covered by that collective bargaining agreement.

18 **§ 13-16-8. SEVERABILITY.** If any section, paragraph, sentence,
19 clause, word, or phrase of this Chapter is for any reason held to be
20 invalid or unenforceable by any court of competent jurisdiction or if
21 application thereof to any person or circumstance is judged invalid,
22 such decision shall not affect the validity of the remaining provisions of
23 this Chapter.

24 **§ 13-16-9. COMPILATION.** This Chapter shall, amend, be
25 incorporated in, and made part of the Revised Ordinances of
26 Albuquerque, New Mexico, 1994.

27 **§ 13-16-10. EFFECTIVE DATE.** This Ordinance takes effect 90
28 days following the date of enactment or on the date of termination of
29 any collective bargaining agreement.

30 **§ 13-16-11. AMENDMENT BY CITY COUNCIL.** This Chapter may
31 be amended by the City Council without a vote of the people as
32 regards the implementation or enforcement thereof, in order to achieve

1 the purposes of this Chapter, but not in a manner that alters the
2 effective date or lessens the substantive requirements of this Chapter
3 or its scope of coverage.”

4
5
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FOR _____ AGAINST _____

7 **SECTION 2. SPECIAL ELECTION PROCESS.** The applicable provisions of
8 the New Mexico Municipal Code, including but not limited to those provisions
9 relating to special, concurrent elections, shall govern the Special Election.

10 (A) **PURPOSE AND DATE OF ELECTION.** A special municipal
11 election shall be held in Albuquerque, New Mexico on Tuesday, November 8,
12 2016, concurrently with the General Election, (the “Special Election”) for the
13 purpose of submitting the question described in this Resolution to the
14 registered qualified voters in the City of Albuquerque.

15 (B) **POLLING LOCATIONS AND CONSOLIDATION OF PRECINCTS.**
16 A List of polling locations and consolidation of precincts for the Special
17 Election is attached to this Resolution as Exhibit “A.” Polls for the Special
18 Election shall open at 7:00 a.m. and shall close at 7:00 p.m. on November 8,
19 2016.

20 (C) **BALLOTS.** Voters shall mark paper ballots. Ballots cast
21 during Early Voting and Election Day shall be electronically tabulated after the
22 polls close on Election Day. Absentee ballots shall be electronically tabulated
23 pursuant to Section 2-4-18 ROA 1994.

24 (D) **VOTER REGISTRATION.** Any person who is otherwise
25 qualified to vote and who is not currently registered to vote may register at the
26 office of the Clerk of the County of Bernalillo, 6th Floor, One Civic Plaza,
27 Albuquerque, New Mexico, or at the office of any duly appointed deputy
28 registration officer on or before 5:00 p.m., on October 11, 2016.

29 (E) **COMBINED ACTIONS.** The City Clerk may combine any
30 required actions with the Bernalillo County Clerk as authorized by law
31 including, but not limited to those authorized pursuant to NMSA 1978 § 3-8-
32 9(C).

1 **(F) PUBLICATION.** The City Clerk shall cause the full text of the
2 Proposed Ordinance set forth above to be published for four consecutive
3 weeks in English and Spanish, the last publication to be not more than two
4 weeks prior to the election at which time the Proposed Ordinance shall be
5 submitted to the electors of the City for their approval or rejection, and shall
6 further provide notice of the content and purpose of the Proposed Ordinance
7 in both English and Spanish to inform electors about the Proposed Ordinance
8 in the time and manner provided by law. This resolution for Special Election
9 shall be published once a week for four consecutive weeks with the first
10 publication between fifty and sixty days before the election.

11 **(G) FURTHER ACTIONS AND COOPERATION.** The officers and
12 agents of the City are hereby authorized and directed to take all action
13 necessary or appropriate to effectuate the provisions of this Resolution,
14 including but not limited to providing this Resolution to the Bernalillo County
15 Clerk and cooperating with the Bernalillo County Clerk, the Bernalillo County
16 Commission and the New Mexico Secretary of State regarding all election
17 matters including but not limited to the completion of any memorandums of
18 agreement as may be required, the preparation of affidavits, instructions and
19 election supplies, and the publication of notices.

20 **SECTION 3.** The officers of the City are hereby authorized and directed to
21 take all action necessary and appropriate to effectuate the provisions of this
22 resolution.

23 **SECTION 4. SEVERABILITY CLAUSE.** If any section, paragraph,
24 sentence, word, or phrase of this Resolution is for any reason held to be
25 invalid or unenforceable by any court of competent jurisdiction, such decision
26 shall not affect the validity of the remaining provisions of this Resolution. The
27 Council hereby declares that it would have passed this Resolution and each
28 section, paragraph, sentence, word or phrase thereof irrespective of any
29 provision being declared unconstitutional or otherwise invalid.

30

31 X:\CITY COUNCIL\SHARE\CL-Staff_Legislative Staff\Legislation\22 Council\RR-82final.docx

1 PASSED AND ADOPTED THIS 1st DAY OF August 2016
2 BY A VOTE OF: 7 FOR 0 AGAINST.

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Recused: Winter

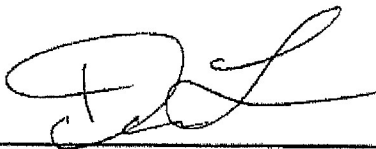
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Excused: Lewis

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Dan Lewis, President

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City Council

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APPROVED THIS _____ DAY OF _____, 2016

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Bill No. R-16-82

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Richard J. Berry, Mayor

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City of Albuquerque

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ATTEST:

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Natalie Y. Howard, City Clerk

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