



Administrative Hearing Rules of Procedure Effective: June 10, 2015

1. TITLE

This policy may be cited as the Administrative Hearing Rules of Procedure.

2. FINDINGS

The Governing Body finds as follows:

- A. **Hearing Officer Qualifications.** A hearing officer shall have a minimum of seven years of actual working experience as an attorney or Magistrate Judge and have an understanding of administrative law. Attorneys shall be in good standing and admitted to practice law in the State of New Mexico.
- B. **Scope.** The hearing officers established by this ordinance shall conduct all hearings required by an ordinance, administrative instruction or otherwise to be conducted by "a hearing officer," "a city hearing officer," "the hearing officer," or "the city hearing officer".
- C. **Selection.** The City Manager may retain contract hearing officers. The City Manager and/or Governing Body may seek the advice of the City Attorney as to the appropriate qualifications and standing of prospective hearing officers. Hearing officers shall be attorneys with a minimum of seven years of actual, relevant working experience, be in good standing and admitted to practice law in the State of New Mexico, and have significant experience in administrative law. Hearing officers may not hold current employment with the City and must otherwise have no conflict of interest in accordance with state law and the New Mexico Rules of Professional Conduct for Lawyers. The City may engage the services of an individual who is not an attorney but has a minimum of seven years of experience as a Magistrate Judge, subject to the additional qualifications above.
- D. **Duties.**
 - 1) Hearing officers are bound by the City of Rio Rancho Code of Ordinances, the **New Mexico Rules of Professional Conduct for attorneys and the New Mexico Judicial Code.**

- 2) Hearing officers are required to disclose to the parties any matter that could be considered a conflict of interest with their duty to render fair and impartial decisions.
- 3) Hearing officers shall refrain from engaging in any ex-parte communication with any party or their counsel, except by express agreement of the parties or for non-substantive communication involving scheduling or procedure.

E. Request for Hearing and Notice of Setting.

- 1) With regard to the hearings that are to be held under this ordinance, a written request for a hearing shall be filed with the City Attorney. The party requesting the hearing shall provide the City Attorney with a mailing address and, if available, an e-mail address. A request for hearing is not valid until received by the City Attorney. Upon receipt of the request for hearing, the City Attorney shall schedule the time and place for the hearing. The selection of date and time shall be made on a first-come-first-served basis unless both parties agree to a specific date and time. The designation of a hearing officer shall be based on the hearing officer's availability and/or a predetermined calendar of availability. The City Attorney shall mail or hand deliver the notice of hearing to the parties and also may e-mail a copy of the notice to each party that has provided an e-mail address. The mailing of the notice to the address provided by the party requesting the hearing constitutes receipt of the notice on the third day after the mailing date. Hand delivery of the notice constitutes receipt of the notice on the date of delivery. Transmission or receipt of an e-mailed copy of the notice shall not change any deadline that applies to a party.
- 2) As used herein, "City business day" means those days in which the City offices are open for general business, typically Monday-Friday except for designated City holidays.
- 3) If a notice period is ten days or less, notices transmitted after 4:00 p.m. on City business days or at any time on non-City business days are deemed transmitted on the next City business day.
- 4) The City may impose an administrative hearing fee not to exceed \$50.00. The hearing officer may, at his/her discretion, credit the collected hearing fee toward any final ruling. If the hearing officer determines that the claimant bears no responsibility for the incident in question, the hearing officer shall credit the administrative hearing fee actually paid, unless he/she determines that the claimant has caused undue delay in the administrative process.

F. Disqualification. There shall be no peremptory disqualification in any administrative proceeding.

G. **Multiple Parties.** Multiple parties with a common interest in the matter constitute a single party for purposes of this section.

H. **Hearing.**

- 1) *Discovery.* There shall be no interrogatories, requests for production of documents, requests for admissions or depositions unless allowed by the hearing officer upon a motion for discovery and a finding that the case warrants use of one or all these discovery methods. The hearing officer may order the parties to produce witness and exhibit lists in advance of a hearing. The hearing officer may order the parties to make evidence available for inspection by the opposition prior to the hearing. The parties are encouraged to stipulate to the authenticity of exhibits prior to the hearing.
- 2) (B) *Telephonic testimony.* Live testimony is preferred. The hearing officer may allow a witness to testify by telephone. Exhibits may be offered through a telephonic witness as long as the exhibits were provided to the opposition at least two City business days before the hearing.
- 3) *Evidence.* Hearing officers may admit any evidence and may give probative effect to evidence that is of a kind commonly relied upon by reasonably prudent people in the conduct of serious affairs. The hearing officer may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. The rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Documentary evidence may be received in the form of copies or excerpts. Hearing officers may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts.
- 4) *Record proper.* The record in an administrative hearing shall include, at the minimum:
 - a) The notices, pleadings, motions and intermediate rulings;
 - b) The documentary evidence offered and admitted;
 - c) A written decision; and
 - d) The recording or transcript of the hearing.
- 5) *Transcript.* Administrative Hearings shall be electronically recorded. A party may arrange at their own expense for the hearing to be stenographically recorded.