

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

HEALTHY WORKFORCE ABQ, THE OLÉ EDUCATION
FUND, REBECCA GLENN, KRISTEN GAMBOA, and
DELIRIA JARAMILLO;

Plaintiffs/Petitioners,

v.

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; THE BERNALILLO
COUNTY COMMISSION; DEBBIE O'MALLEY, ART DE
LA CRUZ, MAGGIE HART STEBBINS, LONNIE
TALBERT, AND WAYNE JOHNSON, in their capacities as
Bernalillo County Commissioners; MAGGIE TOULOUSE
OLIVER, as a Real Party in Interest in her capacity as
Bernalillo County Clerk,

Case No. D-202-CV-2016-05539

Defendants/Respondents.

**VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
OR, IN THE ALTERNATIVE, VERIFIED EMERGENCY PETITION FOR
WRIT OF MANDAMUS AND REQUEST FOR STAY**

1. Plaintiffs/Petitioners Healthy Workforce ABQ, The OLÉ Education Fund, Rebecca Glenn, Kristen Gamboa, and Deliria Jaramillo (together, "Plaintiffs") file this action pursuant to the Albuquerque City Charter, Article III, Section 3 (the direct legislation by voter initiative provisions), NMSA 1978 § 44-6-1, *et seq.* (the Declaratory Judgment Act), NMSA 1978 § 3-8-35 (the special election provisions of the Municipal Election Code), NMSA 1978 § 1-24-1 *et seq.* (the special election provisions of the Election Code), and New Mexico Constitution Art. VI, §13 and NMSA § (1978) 44-2-1 *et seq.* (mandamus statutes).

2. Plaintiffs seek to ensure that the voters of Albuquerque can exercise their right to vote this year on a proposed measure to give Albuquerque's workers a right to earned sick leave, commonly known as the Healthy Workforce Ordinance. The Albuquerque City Council and Bernalillo County Commission have failed to carry out their duties to place the measure on the general election ballot.

PARTIES

3. Plaintiff/Petitioner Healthy Workforce ABQ (HWF) is a measure finance committee as defined by the Albuquerque City Charter Election Code, Art. XIII, Sec. 2(k), and its purpose is to promote the Healthy Workforce Ordinance. HWF is a nonprofit corporation registered with the New Mexico Secretary of State with a principal place of business in Albuquerque, NM. HWF's contributors and members drafted the Healthy Workforce Ordinance, employed canvassers and coordinated volunteers to collect and file petition signatures, and lobbied city and county officials to comply with their legal obligations to place a summary of the Healthy Workforce Ordinance on the November 8, 2016 ballot.

4. Plaintiff/Petitioner OLÉ Education Fund (OLÉ) is a nonprofit corporation registered with the New Mexico Secretary of State with a principal place of business in Albuquerque, NM. OLÉ is a membership organization that represents and organizes low-wage workers to win workplace protections such as earned sick time, and contributed significant time and resources to the effort to gather signatures for the Healthy Workforce Ordinance and to lobby elected officials to perform their ministerial duties to place it on the general election ballot.

5. Plaintiff/Petitioner Rebecca Glenn is a registered Albuquerque voter, a signer of the Notice of Intent to place a summary of the Healthy Workforce Ordinance on the general

election ballot, and a signer of the Healthy Workforce Ordinance petition. She is a resident of Albuquerque, NM.

6. Plaintiff/Petitioner Kristen Gamboa is a registered Albuquerque voter, a signer of the Notice of Intent to place a summary of the Healthy Workforce Ordinance on the general election ballot, and a signer of the Healthy Workforce Ordinance petition. She is a resident of Albuquerque, NM.

7. Plaintiff/Petitioner Deliria Jaramillo is a registered Albuquerque voter, a signer of the Notice of Intent to place a summary of the Healthy Workforce Ordinance on the general election ballot, and a signer of the Healthy Workforce Ordinance petition. She is a resident of Albuquerque, NM.

8. Defendant/Respondent the City of Albuquerque refers to the municipal corporation known as the City of Albuquerque.

9. Defendant/Respondent City Council of the City of Albuquerque, New Mexico is the legislative branch of the municipal government of the City of Albuquerque.

Defendants/Respondents Ken Sanchez, Isaac Benton, Klarissa Peña, Brad Winter, Dan Lewis, Pat Davis, Diane Gibson, Trudy Jones and Don Harris are the nine City Councilors of the City of Albuquerque. They are named herein because they have a statutory duty under the Municipal Election Code, NMSA 1978 § 3-8-35, to pass a special election resolution to place a direct voter legislation initiative on the general election ballot. They are referenced herein collectively as “the City Council”.

10. Defendant/Respondent the Bernalillo County Commission is the governing body of Bernalillo County. Debbie O’Malley, Art De La Cruz, Maggie Hart Stebbins, Lonnie Talbert, and Wayne Johnson are the County Commissioners of Bernalillo County. They are named herein

because they have a statutory duty under the Election Code, NMSA 1978 § 1-24-2, to pass a special election resolution to place the Healthy Workforce Ordinance on the general election ballot. They are referenced herein collectively as “the County Commission”.

11. Defendant and Real Party in Interest Maggie Toulouse Oliver is the County Clerk of Bernalillo County and is named herein because she has responsibility for preparing the general election ballot.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action and over the parties.

13. This Court has jurisdiction to issue a declaratory judgment pursuant to NMSA 1978 §§ 44-6-1 to 44-6-15 and the New Mexico Constitution Art. VI, § 13.

14. This Court has jurisdiction to issue a writ of mandamus pursuant to Article VI, Section 13 of the New Mexico Constitution and NMSA 1978 § 44-2-1 *et seq.*

15. Venue is proper in the Second Judicial District because this district contains the City of Albuquerque and Bernalillo County.

BACKGROUND

16. Under the direct legislation by voter initiative provision at Article III, Section 3 of the Albuquerque City Charter (“the Charter”), Albuquerque voters have the right to propose and vote annually on legislation that the City Council cannot or will not enact on its own. This gives the voters the right to serve as the legislative body for the City and control how questions appear on the ballot. *Id.*

17. There are several steps that proponents of direct voter legislation must follow to put a measure on the ballot. First, they must submit “a notice of intent to circulate a petition proposing any measure” to the City Clerk, signed by five Albuquerque voters, and also file the

proposed measure with the City Clerk. Charter, Art. III, Sec. 3(a)(1)-(2). Then, proponents must obtain a minimum number of signatures within a 60-day period, which this year was 14,218. *Id.* Sec. 3(a)(3)-(5).

18. Once the City Clerk certifies that the proponents have gathered the required minimum number of signatures, unless the City Council passes the proposed ordinance into law, “an election on the issues must be held at the next general election or regular municipal election.” *Id.* Sec. 3(a)(6). This once-annual voting right is the result of a 2015 Charter amendment. Previously, Albuquerque’s voters had the right to vote in a special election 90 days after petition signatures were submitted, any time during the year.

19. Once “an election on the issues must be held,” *id.*, the City Council has a mandatory ministerial duty to pass an election resolution to put the ballot issue before the voters. *See* NMSA 1978 § 3-8-35 (“When a special election is called or required by law, an election resolution shall be adopted by the governing body calling for the election[.]”) (emphasis added); NMSA 1978 § 3-8-1(C) (As used in the Municipal Election Code, “shall” is mandatory).

20. In the election resolution, the City must set forth “the questions to be submitted to the voters.” NMSA 1978 § 3-8-35. Because the Charter requires that the ballot contain “the proposed measure as originally submitted,” the City Council’s duty is simply to pass a resolution that places the question that the proponents originally submitted on the ballot. Charter, Art. III, Sec. 3(b).

21. Once the City Council passes the special election resolution requiring a measure to be placed on the general election ballot, it goes to the County Commission, which has a mandatory duty under the Election Code to “issue a public proclamation calling the election” whenever a special election is “required by law.” NMSA 1978 § 1-24-2. In the context of a direct

voter legislation initiative under the Albuquerque City Charter, a special election is “required by law” once the City Council passes an election resolution calling for it.

22. Once the County Commission formally calls for the election, the County Clerk may prepare the general election ballot with the direct voter legislation question, and it goes to the voters on Election Day.

23. Here, the City failed to pass an election resolution making it clear that a summary of the Healthy Workforce Ordinance was the question that should be placed on the general election ballot. As a result, the County Commission claimed that it could not pass an election resolution to place the Healthy Workforce Ordinance on the ballot, because the full text would not fit. Absent a court order, Albuquerque’s voters will be deprived of their right to vote this year on the Healthy Workforce Ordinance.

FACTS

24. Pursuant to the procedures outlined in Article III, Section 3 of the Charter, Plaintiffs submitted a Notice of Intent to the City Clerk of the City of Albuquerque on May 11, 2016. *See* Exhibit 1 (Notice of Intent). The Notice of Intent informed the City Clerk of Plaintiffs’ “intent to circulate a petition to place a summary of a proposed measure on the next general election ballot[.]” (emphasis added).

25. In the second paragraph of the Notice of Intent, Plaintiffs submitted the summary of the proposed measure to be placed on the petition and the ballot, which they asked the City Clerk to conform into a petition to gather signatures of Albuquerque voters:

“Proposing to enact the Albuquerque Healthy Workforce Ordinance such that, beginning 90 days after enactment: First, Albuquerque employers must allow employees to accrue sick leave at the rate of one hour of leave per 30 hours worked. Second, employees may use sick leave for their own or a family member’s illness, injury, or medical care or for absences related to domestic violence, sexual

assault or stalking. Third, employers with 40 or more employees must allow each employee to use up to 56 hours of accrued sick leave each year, and employers with fewer than 40 employees must allow each employee to use up to 40 hours of accrued sick leave each year. Fourth, employers must notify employees of their rights and maintain records. The ordinance also provides for public enforcement, a private right of action, and liquidated damages and penalties for noncompliance or retaliation.”

26. The proponents also attached a draft City Council Resolution to the Notice of Intent, which contained an identical summary as well as the full text of the Healthy Workforce Ordinance. *See* Exhibit 2 (Attachment to Notice of Intent). The draft resolution provided that the full text of the Healthy Workforce Ordinance should be made available to voters on the website of the Office of the City Clerk from the date of the resolution’s adoption until the date of the election.

27. Plaintiffs specified in the Notice of Intent that a summary should appear on the ballot because Bernalillo County’s ballot is one page long. The Bernalillo County Clerk is unable to extend it to two pages for financial reasons and because the risk of tabulation error increases when a second page is added to the ballot.

28. Although the full text of the Healthy Workforce Ordinance is short compared to similar workers’ rights statutes, printing its full text on the ballot would take most, if not all, of an entire page, making it impossible to fit on the one-page general election ballot.

29. On May 12, 2016, the City Clerk provided Plaintiffs with a signed petition containing the summary they had originally submitted. *See* Exhibit 3 (Petition).

30. On three dates, the last of which was July 11, 2016, Petitioners submitted to the City Clerk petitions signed by more than the necessary 14,218 Albuquerque voters. On July 21, 2016, the City Clerk sent the City Council a memorandum certifying that she had verified enough

signatures to send the proposed measure to the City Council for an election resolution. *See* Exhibit 4 (Certification of Petition, July 21, 2016).

31. The City Council passed an election resolution on August 1, 2016 that properly states that “the Charter requires that a Special Election be held at the next General Election.” Ex. 5 (Election Resolution) at 2:4-6. The resolution also cites the City Council’s ministerial duty to pass an election resolution pursuant to NMSA 1978 § 3-8-35. *Id.* It also correctly resolves that “[o]n November 8, 2016, a special municipal election (the “Special Election”) shall be held in Albuquerque, New Mexico.” *Id.* at 2:9-10.

32. However, the City Council’s resolution fails in one crucial respect: it does not specify that a summary of the Healthy Workforce Ordinance must appear on the general election ballot. *See* Exhibit 5 (Election Resolution). Rather, it instructs the City Clerk “to coordinate with the Bernalillo County Clerk to place the following Proposed Ordinance on the ballot, and the qualified voters of the City of Albuquerque shall be permitted to vote “for” or “against” the Proposed Ordinance[.]” *Id.* at 2. After this language, the summary of the proposed ordinance and the full text of the proposed ordinance appear. At the end of the full text, the Election Resolution contains the words “FOR” and “AGAINST,” followed by spaces for marking with a cross or a check the word desired. *See* Exhibit 5 (Election Resolution). *Id.* at 9.

33. Plaintiffs did not file this lawsuit immediately after the City Council’s August 1, 2016 election resolution because they expected that the Bernalillo County Commission, which controls the final text of the general election ballot, would carry out its duty to place the originally submitted summary on the ballot in spite of the Council’s failure to specify the specific “question.”

34. However, in the month prior to the County Commission's meeting on September 8, 2016, the Office of the City Attorney made several statements in the media that the City Charter requires the ballot to contain the full text of the Healthy Workforce Ordinance.¹ On information and belief, City Attorney Jessica Hernandez also met with County Attorney Ken Martinez to attempt to persuade him of this position. Finally, at approximately 10:00 a.m. on September 8, 2016, the day of the County Commission's meeting, Ms. Hernandez sent a memorandum to the County Attorney, Ken Martinez, reiterating her arguments that the Charter requires the full text of direct voter legislation.

35. During the County Commission's September 8, 2016 meeting, the County Clerk, Maggie Toulouse Oliver, presented the Commissioners with a mock ballot showing that Plaintiffs' originally-submitted summary would fit on the general election ballot. She also stated that the full text of the Healthy Workforce Ordinance would not fit, and explained why extending the ballot to two pages would be impossible.

36. Ultimately, after a lengthy discussion about the City Attorney's memorandum and the lack of clear guidance from the City Council, the County Commissioners did not vote to place a summary of the Healthy Workforce Ordinance on the general election ballot. Commissioner Art de la Cruz offered an explanation for his position. He stated that he supported the voters' right to vote this year on the Healthy Workforce Ordinance, and that there was space for the initiative on the ballot in summary form. However, he stated he had no choice but to vote no because the County Commission had not received sufficient instruction from the City Council in its August 1,

¹ See, e.g., Dan McKay, *City's sick leave question too long for ballot*, Albuquerque Journal, August 3, 2016; Andy Lyman, *City, county disconnect could mean two initiatives don't make ballot*, New Mexico Political Report August 30, 2016; *Meeting to Decide on Sick Leave Ballot Question*, KUNM News, September 6, 2016.

2016 election resolution about whether it wanted a summary or full text on the ballot. He suggested that “it needs to be remanded back to the city for finalization” because “it is incumbent on the City to be straightforward and responsible in its dealings with us.”

37. Pursuant to state election law, ballots must be finalized and sent to the Secretary of State 56 days before a general election. That date is September 13, 2016. The City Council’s and County Commission’s failures to carry out their statutory duties will cause irreparable harm to the voters of Albuquerque if not immediately remedied, because they will lose their right to vote this November on the Healthy Workforce Ordinance.

CLAIMS FOR RELIEF

Temporary Restraining Order and Injunction

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

39. Over 14,218 voters signed the petition in favor of placing a summary of the Healthy Workforce Ordinance on the ballot. These voters expect to be able to vote in favor of earned sick days at the next general election, as the Charter requires.

40. A temporary restraining order and injunction are warranted here because Plaintiffs meet the standard for relief. *See LaBalbo v. Hymes*, 1993-NMCA-010, ¶ 11, 115 N.M. 314. To obtain a preliminary injunction, Plaintiffs must show that: 1) plaintiffs will suffer irreparable harm unless the injunctive relief is granted; 2) plaintiffs’ threatened injury outweighs any damage the injunctive relief might cause defendants; 3) issuance of the injunctive relief will not be adverse to the public’s interest; and 4) there is a substantial likelihood that plaintiffs will prevail on the merits. *Id.*

41. Here, Plaintiffs will suffer irreparable harm if immediate injunctive relief is not granted, because the Healthy Workforce Ordinance will not appear on the ballot, and this Court will not have an opportunity to rule on the merits. This harm outweighs any damage the injunctive relief might cause defendants. An injunction will not be adverse to the public's interest; to the contrary, it will protect the public's legal right to vote annually on proposed ballot initiatives. Finally, there is a substantial likelihood that Plaintiffs will prevail on the merits, because the New Mexico Supreme Court has ruled that a summary is appropriate in the absence of an explicit statutory "full text" requirement, and the Charter requires annual elections on direct voter legislation initiatives.

42. The New Mexico Supreme Court has repeatedly held that "[p]rovisions reserving to the people the power of initiative and referendum are to be given a liberal construction to effectuate the policy thereby adopted." *Turner v. Barnhart* 1972-NMSC-036, ¶ 7, 83 N.M. 759 (quoting *City Commission of Albuquerque v. State*, 75 N.M. 438, 405 P.2d 924 (1965)). Furthermore, "election laws should be liberally construed so as to accomplish their purpose and that technicalities should not be permitted to deprive voters of their franchise[.]" *Turner*, 1972-NMSC-036 ¶ 9 (quoting *Palmer v. Miller*, 1964-NMSC-072, ¶ 13, 74 N.M. 129).

43. Our Supreme Court made clear in *Turner v. Barnhart* that there is no full text requirement for direct voter legislation initiative ballots unless the underlying statute specifically requires full text. 1972-NMSC-036, ¶¶ 9-11. The Charter does not require "full text" or contain any similar language. It only requires that the ballot contain "the proposed measure as originally submitted." Here, Plaintiffs originally submitted a summary.

44. Placing the originally submitted summary of the Healthy Workforce Ordinance on the ballot is the only way to give effect to 1) the Charter's requirement that "an election on the

issues must be held at the next general election,” Art. III, Sec. 3(a)(6), and 2) the City Council’s election resolution requiring that a special municipal election take place in Albuquerque at this year’s general election. Ex. 5 (Election Resolution).

Writ of Mandamus

45. In the alternative, mandamus is proper here since the City Council has a ministerial duty to pass an election resolution that sets forth “the questions to be submitted to the voters,” whenever a special election is “required by law.” NMSA 1978 § 3-8-35. The City Council failed to do this in a way that complies with the Charter.

46. Similarly, mandamus is proper here against the County Commission, which has a ministerial duty under the Election Code to “issue a public proclamation calling the election” whenever a special election is “required by law.” NMSA 1978 § 1-24-2. A special election is required by law here not only pursuant to the Albuquerque City Charter, but also pursuant to the City Council’s election resolution. The County Commission did not fulfill its duty.

PRAYER FOR RELIEF

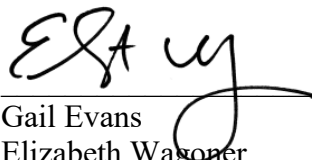
WHEREFORE, Plaintiffs pray for the following relief:

- A. A Temporary Restraining Order or an emergency stay enjoining the County Clerk from printing the general election ballots until a hearing is conducted in this case;
- B. An order setting a hearing for Monday, September 12, 2016 or Tuesday, September 13, 2016;
- C. A declaratory judgment that a summary is appropriate under the Albuquerque City Charter’s direct voter legislation provision, and an injunction or a writ of mandamus ordering that a summary of the Healthy Workforce Ordinance shall appear on the November 8, 2016 general election ballot;

D. Any other relief that the Court deems just and proper.

Dated: September 8, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to be a combination of initials and names, positioned above a horizontal line.

Gail Evans
Elizabeth Wagoner
Tim Davis

New Mexico Center on Law and Poverty
924 Park Avenue, SW, Suite C
Albuquerque, NM 87106
(505) 255-2840

gail@nmpovertylaw.org

elizabeth@nmpovertylaw.org


tim@nmpovertylaw.org

Attorneys for Plaintiffs/Petitioners

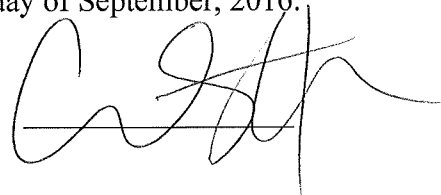
VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

Andrea Serrano, on behalf of Healthy Workforce ABQ, a measure finance committee, of which she is a member of the board of directors, being first duly sworn upon her oath, states that she has read the foregoing Complaint for Temporary, Preliminary and Permanent Injunctive and Declaratory Relief or In the Alternative Verified Emergency Petition for Original Writ of Mandamus and Request for Stay, understands its contents, affirms that its factual statements are true and correct to the best of her knowledge, information and belief, and acknowledges her signature before the undersigned on this 8th day of September, 2016.

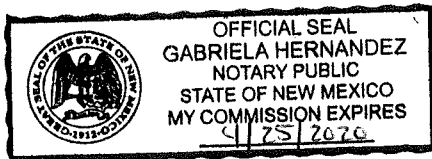


SUBSCRIBED AND SWORN before me this 8th day of September, 2016.



My Commission expires:

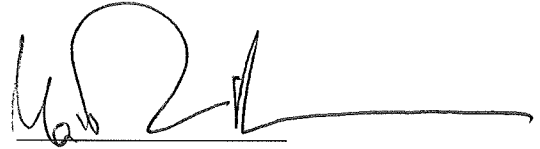
4/25/2020



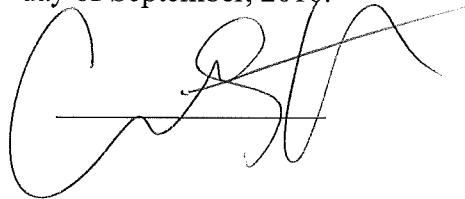
VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

Matthew Henderson, on behalf of OLÉ Education Fund, a New Mexico non-profit corporation, of which he is the Executive Director, being first duly sworn upon his oath, states that he has read the foregoing Complaint for Temporary, Preliminary and Permanent Injunctive and Declaratory Relief or In the Alternative Verified Emergency Petition for Original Writ of Mandamus and Request for Stay, understands its contents, affirms that its factual statements are true and correct to the best of his knowledge, information and belief, and acknowledges his signature before the undersigned on this 8th day of September, 2016.

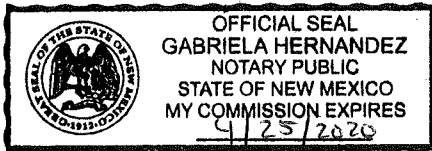


SUBSCRIBED AND SWORN before me this 8th day of September, 2016.



My Commission expires:

4/25/2020



VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

Rebecca Glenn, a registered Albuquerque voter, a signer of the Notice of Intent to place a summary of the Healthy Workforce Ordinance on the general election ballot, and a signer of the Healthy Workforce ABQ petition, being first duly sworn upon her oath, states that she has read the foregoing Complaint for Temporary, Preliminary and Permanent Injunctive and Declaratory Relief or In the Alternative Verified Emergency Petition for Original Writ of Mandamus and Request for Stay, understands its contents, affirms that its factual statements are true and correct to the best of her knowledge, information and belief, and acknowledges her signature before the undersigned on this 8th day of September, 2016.

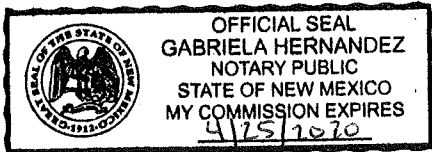
Rebecca Glenn

SUBSCRIBED AND SWORN before me this 8th day of September, 2016.

Gabriela Hernandez

My Commission expires:

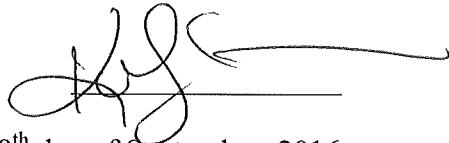
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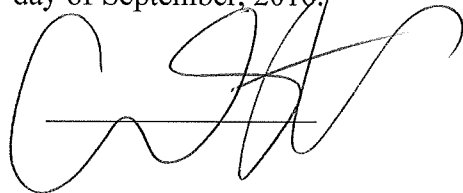
VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

Kristen Gamboa, a registered Albuquerque voter, a signer of the Notice of Intent to place a summary of the Healthy Workforce Ordinance on the general election ballot, and a signer of the Healthy Workforce ABQ petition, being first duly sworn upon her oath, states that she has read the foregoing Complaint for Temporary, Preliminary and Permanent Injunctive and Declaratory Relief or In the Alternative Verified Emergency Petition for Original Writ of Mandamus and Request for Stay, understands its contents, affirms that its factual statements are true and correct to the best of her knowledge, information and belief, and acknowledges her signature before the undersigned on this 8th day of September, 2016.

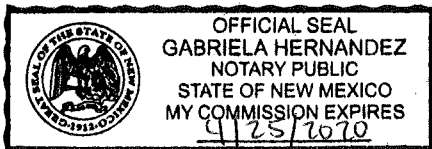


SUBSCRIBED AND SWORN before me this 8th day of September, 2016.



My Commission expires:

4/25/2020



VERIFICATION

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

Deliria Jaramillo, a registered Albuquerque voter, a signer of the Notice of Intent to place a summary of the Healthy Workforce Ordinance on the general election ballot, and a signer of the Healthy Workforce ABQ petition, being first duly sworn upon her oath, states that she has read the foregoing Complaint for Temporary, Preliminary and Permanent Injunctive and Declaratory Relief or In the Alternative Verified Emergency Petition for Original Writ of Mandamus and Request for Stay, understands its contents, affirms that its factual statements are true and correct to the best of her knowledge, information and belief, and acknowledges her signature before the undersigned on this 8th day of September, 2016.

Deliria Jaramillo

SUBSCRIBED AND SWORN before me this 8th day of September, 2016.

[Signature]

My Commission expires:

4/25/2020

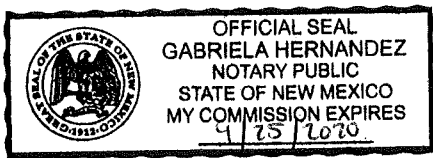


Exhibit 1

May 11, 2016

Natalie Howard
City Clerk
Office of the City Clerk
600 2nd St. NW, Room 720
Albuquerque, NM 87102

Dear Ms. Howard,

This letter serves as notice of intent to circulate a petition to place a summary of a proposed measure on the next general election ballot to require Albuquerque employers to provide earned sick leave to employees, which employees may use for their own or a family member's illness, injury, or medical care, or for absences related to domestic violence, sexual assault or stalking.

The summary of the proposed measure is as follows:

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

Please accept this letter and the attached draft City Council Election Resolution, which includes the above summary as well as the full text of the proposed measure, to be conformed into a petition to gather signatures of voters within the City of Albuquerque.

Thank you for your attention to this matter.

By: Rebecca Glenn Date: 5/11/16
Print name: Rebecca Glenn
Address: 306 Arno St. NE

By: Kristen Gamboa Date: 5/11/16
Print name: Kristen Gamboa
Address: 604 Saddle Blanket Tr. SW

By: [Signature] Date: 5/11/16

Print name: Brenda Morales

Address: 1128 Yerban Rd. SW

By: [Signature] Date: 5/11/16

Print name: Thomas Martin

Address: 812 City View Dr. SW

By: [Signature] Date: 5/11/16

Print name: Delicia Jaramillo

Address: 520 Jane St. NE

By: [Signature] Date: 5-11-2016

Print name: Marissa S. Jake

Address: 11516 Appian Way NE

By: _____ Date: _____

Print name: _____

Address: _____

By: _____ Date: _____

Print name: _____

Address: _____

Exhibit 2

CITY of ALBUQUERQUE

TWENTY-SECOND COUNCIL

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

1 **PROPOSED MEASURE AND ELECTION RESOLUTION**

2 **ADOPTING A PROPOSED MEASURE TO BE SUBMITTED TO THE VOTERS AT**
3 **THE NEXT REGULAR OR SPECIAL MUNICIPAL ELECTION OR THE**
4 **NOVEMBER 8, 2016 GENERAL ELECTION, CONCERNING AN ORDINANCE TO**
5 **ALLOW EMPLOYEES TO ACCRUE AND USE SICK LEAVE AND**
6 **ESTABLISHING PROCEDURES FOR NOTICE, RECORDKEEPING, AND**
7 **ENFORCEMENT.**

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

12 **WHEREAS, on July __, 2016, the City Clerk filed a certification with the**
13 **City Council certifying that the requisite number of signatures were obtained**
14 **and verified as required by the Charter to submit the proposed measure set**
15 **forth below to the voters of the City of Albuquerque; and**

16 **WHEREAS, as set forth in the City Charter, when an election is required**
17 **pursuant to the “direct legislation by voter initiative” process, such an**
18 **election must be held at the next general election or regular municipal**
19 **election.**

20 **BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
21 **ALBUQUERQUE:**

1 **NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF**
2 **ALBUQUERQUE:**

3 **§ 13-16-1 SHORT TITLE.** This article may be cited as “the Albuquerque Healthy
4 **Workforce Ordinance.”**

5 **§ 13-16-2 DEFINITIONS.**

6 **CITY.** The City of Albuquerque.

7 **DEPARTMENT.** The office of the City Attorney, unless the mayor designates a
8 different city agency.

9 **DOMESTIC PARTNER.** A person with whom another person maintains a
10 household and a mutual committed relationship, without a legally recognized
11 marriage.

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

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

20 **FAMILY MEMBER.** A spouse or domestic partner; a child, sibling, parent,
21 grandparent, grandchild, or legal ward or guardian of the employee or of the
22 employee’s spouse or domestic partner (whether of a biological, foster,
23 adoptive or step relationship), and the spouses or domestic partners of these
24 individuals; a person to whom the employee stands or stood in loco parentis;
25 or any other individual related by blood or affinity whose close association
26 with the employee or employee’s spouse or domestic partner is the equivalent
27 of a family relationship.

1 **LARGE EMPLOYER.** An employer that is not a small employer as defined
2 herein.

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

9 **SMALL EMPLOYER.** An employer of fewer than forty (40) individual
10 employees. In determining the number of employees, all employees shall be
11 counted whether they are full-time, part-time or temporary employees and
12 whether or not they perform work within the City. When the number of
13 employees fluctuates in any year, the number of employees shall be
14 determined by the number of individuals employed in the previous year.

15 **§ 13-16-3 PAID SICK TIME.**

16 **(A)** An employer shall provide employees accrued paid sick time for: An
17 employee or employee’s family member’s mental or physical illness, injury or
18 health condition; including medical diagnosis, care, treatment, or recovery; for
19 preventive medical care; for closure of the employee’s place of business or
20 family member’s school or place of care for public health reasons; or for
21 absence necessary due to domestic violence, sexual assault or stalking
22 suffered by the employee or employee’s family member, provided the leave is
23 to obtain medical or psychological treatment, relocate, prepare for or
24 participate in legal proceedings, or obtain related services.

25 **(B)** Employees shall accrue a minimum of one hour of paid sick time for every
26 30 hours worked. Employees of large employers cannot use more than 56
27 hours of paid sick time in a year, and employees of small employers cannot
28 use more than 40 hours of paid sick time in a year, unless the employer’s
29 policy provides for a higher limit. Paid sick time shall begin to accrue on the

1 first day of employment. Employees shall be entitled to use accrued paid sick
2 time beginning on the 90th calendar day following the first day of employment
3 or the effective date of this law, whichever is later, unless the employer's
4 policy provides that employees may use accrued time earlier. Employees
5 exempt from overtime requirements under federal and state law will be
6 assumed to work no more than 40 hours in each work week for purposes of
7 paid sick time accrual.

8 (C) Paid sick time shall be carried over to the following year. If an employee is
9 transferred but remains employed by the same employer, or if a successor
10 employer replaces the original employer, or if an employee separates from
11 employment but is rehired by the same employer within 12 months, the
12 employee is entitled to all previously accrued paid sick time, unless it was
13 paid out. An employer may, but is not obligated to, loan paid sick time to an
14 employee in advance of accrual by such employee or pay out unused accrued
15 paid sick time when an employee separates from employment.

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

19 (E) An employer may require reasonable documentation that paid sick time
20 has been used for a covered purpose only if the employee uses 3 or more
21 consecutive paid sick days. An employer may not require that the
22 documentation explain the nature of any medical condition or the details of
23 the domestic violence, sexual assault, or stalking. All information an employer
24 obtains related to the employee's reasons for taking paid sick time shall be
25 treated as confidential and not disclosed except with the permission of the
26 affected employee. If an employer chooses to require documentation for paid
27 sick time, the employer is responsible for paying all out-of-pocket expenses
28 the employee incurs in obtaining the documentation.

1 **§ 13-16-4 EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.** An
2 employer shall not intimidate, retaliate, discipline, discharge, suspend, assign
3 to less favorable duties, refuse to hire, reduce pay or hours, refuse to assign
4 additional hours, report an employee or an employee's family member to any
5 law enforcement agency, or take or threaten any adverse action whatsoever
6 against an employee because the employee has exercised rights protected
7 under this Ordinance or has in good faith alleged violations of this Ordinance,
8 whether mistakenly or not. There shall be a rebuttable presumption of a
9 violation of this section whenever an employer takes any adverse action
10 against a person who, within 90 days, exercised rights protected under this
11 Ordinance or has in good faith alleged violations of this Ordinance, whether
12 mistakenly or not. An employer shall not require an employee to find a
13 replacement worker as a condition of using paid sick time or count use of paid
14 sick time in a way that will lead to any adverse employment action.

15 **§ 13-16-5 NOTICE AND RECORDS.** On or before the effective date of this
16 Ordinance, the Department shall make available on its website a summary
17 notice to employees in English and Spanish of each provision of this
18 Ordinance. Employers shall provide this notice to each employee on the first
19 day of employment, and shall post it in a conspicuous place in each
20 establishment where employees are employed. Employers shall maintain
21 payroll records for each employee showing the weekly hours worked, wages
22 paid, and amount of paid sick time accrued or used each pay period, and shall
23 print this information in the written receipt required by NMSA § 50-4-2. All
24 records shall be retained for four years and made available for inspection and
25 copying upon request by the Department or the employee. Failure to maintain
26 records shall give rise to a rebuttable presumption that the employer has
27 violated this Ordinance, and the fact finder may rely on employee's reasonable
28 estimates in calculating damages.

29 **§ 13-16-6 ENFORCEMENT.** The Department shall implement and enforce this
30 article, shall have investigation and inspection authority as provided in 29

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

23 **§ 13-16-7 RELATIONSHIP TO OTHER REQUIREMENTS.**

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

1 (B) This article shall not be construed to diminish or impair the rights or
2 obligations of an employee or employer under any valid contract, collective
3 bargaining agreement, employment benefit plan or other agreement providing
4 more generous paid sick time to an employee than required herein. Employers
5 subject to this Ordinance may by collective bargaining agreement provide that
6 this Ordinance shall not apply to employees covered by that collective
7 bargaining agreement.

8 § 13-16-8 SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause,
9 word, or phrase of this Chapter is for any reason held to be invalid or
10 unenforceable by any court of competent jurisdiction or if application thereof
11 to any person or circumstance is judged invalid, such decision shall not affect
12 the validity of the remaining provisions of this Chapter.

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

15 § 13-16-10 EFFECTIVE DATE. This Ordinance takes effect 90 days following
16 the date of enactment or on the date of termination of any collective
17 bargaining agreement.

18 § 13-16-11 AMENDMENT BY CITY COUNCIL. This Chapter may be amended by
19 the City Council without a vote of the people as regards the implementation or
20 enforcement thereof, in order to achieve the purposes of this Chapter, but not
21 in a manner that alters the effective date or lessens the substantive
22 requirements of this Chapter or its scope of coverage.

Exhibit 3



____ PAID CIRCULATOR ____ UNPAID VOLUNTEER

PETITION FOR DIRECT LEGISLATION BY VOTER INITIATIVE

ADOPTING THE ALBUQUERQUE HEALTHY WORKFORCE ORDINANCE

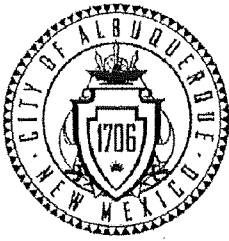
Pursuant to the Albuquerque City Charter Article III, Section 3, the undersigned support the proposed measure to enact the Albuquerque Healthy Workforce Ordinance Chapter 13, Article 16 of the Albuquerque Code of Ordinances such that, beginning 90 days after enactment: First, Albuquerque employers must allow employees to accrue sick leave at the rate of one hour of leave per 30 hours worked. Second, employees may use sick leave for their own or a family member's illness, injury, or medical care, or for absences related to domestic violence, sexual assault or stalking. Third, employers with 40 or more employees must allow each employee to use up to 56 hours of accrued sick leave each year, and employers with fewer than 40 employees must allow each employee to use up to 40 hours of accrued sick leave each year. Fourth, employers must notify employees of their rights and maintain records. The ordinance also provides for public enforcement, a private right of action, and liquidated damages and penalties for noncompliance or retaliation. The full text of the proposed Ordinance is attached to this Petition.

ANY PERSON KNOWINGLY PROVIDING OR CAUSING TO BE PROVIDED ANY FALSE INFORMATION ON A PETITION, FORGING A SIGNATURE, OR SIGNING A PETITION WHEN THAT PERSON KNOWS HE OR SHE IS NOT A QUALIFIED ELECTOR OF THE CITY OF ALBUQUERQUE MAY BE CONVICTED OF A FOURTH DEGREE FELONY.

USUAL SIGNATURE	PRINTED NAME AS REGISTERED	ADDRESS AS REGISTERED INCLUDING QUADRANT	DATE

Natalie Y. Howard, City Clerk *Natalie Y. Howard* Date of Issuance: 5/12/16 Date of Notice of Intent: 5/11/16

Exhibit 4



City of Albuquerque

Office of the City Clerk

Richard J. Berry, Mayor

Natalie Y. Howard, City Clerk

Interoffice Memorandum

July 21, 2016

To: Dan Lewis, Council President

From: Natalie Y. Howard, City Clerk *NYA*

Subject: Certification of Petitions for Direct Legislation (amended)

Pursuant to the provisions of Article III, Section 3 (Direct Legislation by Voter Initiative) of the City Charter, I, Natalie Y. Howard, the City Clerk of the City of Albuquerque hereby certify that my office has verified the required number of signatures to allow the proposed legislation entitled, "Healthy Workforce Ordinance,"³ to move forward to the City Council.

On May 11, 2016, I accepted the Notice of Intent to Circulate the Petition. The group initiating the direct legislation had until July 11, 2016 to circulate the petition and gather signatures. Under the provisions of §2-4-13 ROA 1994, the group delivered petitions to my office in stages and my office initiated the process of verifying signatures. (§2-4-13 (F) ROA 1994).

Under the provisions of §3-1-5 NMSA 1978, my office had ten days from the legal deadline to file the petition to verify the signatures, which we were able to accomplish well within that legal timeframe. On July 19, 2016 we completed the verification process with the following statistics:

Signatures reviewed: 18,204
Signatures approved: 14,477
Signatures rejected: 3,626
Signatures pending: 101 (pending signatures are neither approved nor rejected, indicating that the person reviewing the signatures cannot make a determination. Pending signatures are reviewed at the end of the process, if needed)

Pursuant to Article III, Section 3 (a)(6) "If the Council fails to act upon a measure so proposed within fourteen days after the City Clerk files a certification with the Council that the petition has been signed by the required number of voters, or the Council acts adversely thereon or amends it an election on the issues must be held at the next general election or regular municipal election."

cc: Richard J. Berry, Mayor
Robert J. Perry, Chief Administrative Officer
Jessica Hernandez, City Attorney
City Councilors
Jon Zaman, Director of Council Services

Exhibit 5

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 FOR _____ AGAINST _____
6

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

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

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

20 **(C) BALLOTS.** Voters shall mark paper ballots. Ballots cast during
21 Early Voting and Election Day shall be electronically tabulated after the polls
22 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 qualified
25 to vote and who is not currently registered to vote may register at the office of
26 the Clerk of the County of Bernalillo, 6th Floor, One Civic Plaza, Albuquerque,
27 New Mexico, or at the office of any duly appointed deputy registration officer
28 on or before 5:00 p.m., on October 11, 2016.

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

EXHIBIT "A"
2016 GENERAL ELECTION

EVCC/VCC Location		Address	Early Voting Election Day	Hours of Operation
EVCC01	98th & Central	120 98th St NW	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC02	Caracol Plaza	12500 Montgomery Blvd NE	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC03	Central Mercado	301 San Pedro Dr SE	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC04	Clerk's Annex	1500 Lomas Blvd NW	EV	Mon. - Sat., 8 a.m. - 8 p.m. *Opens Tues., Oct 11, 2016
EVCC05	Daskalos Center	5339 Menaul Blvd NE	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC06	Fiesta Del Norte Shopping Center	6001 San Mateo Blvd NE	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC07	Four Hills Shopping Center	13140 Central Ave SE	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC08	Holly Plaza	6500 Holly Ave NE	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC09	Los Altos Plaza	4200 Wyoming Blvd NE	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC10	Los Ranchos Villa	6601 4th St NW	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC11	Bernalillo County Visitor and Cultural Center	6080 Isleta Blvd SW	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC12	Petroglyph Plaza	8201 Golf Course Rd NW	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC13	South Valley Multipurpose Senior Center	2008 Larrazolo Rd SW	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC14	Sun Country Plaza	9421 Coors Blvd NW Suite G & H	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC15	Tijeras City Hall	12 Camino Municipal, Tijeras, NM	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC16	University of New Mexico	Student Union Building	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC17	West Bluff Center	5201 Ouray Rd NW	EV	Mon. - Sat., 8 a.m. - 8 p.m.
EVCC27	Desiderio Community Center	117 Tribal Rd 7036 ToHajiilee, NM	EV	Tues. - Fri., 10am.-8pm Sat., 8am. - 12pm.
EVCC39	Isleta Elderly Center	Building 79 Tribal Rd 40, Isleta NM	EV	Tues. - Sat., 8 a.m. - 5 p.m.
VCC01	98th & Central	120 98th St NW	ED	11/8/16, Tues., 7am - 7pm
VCC02	Caracol Plaza	12500Montgomery Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC03	Central Mercado	301 San Pedro Dr SE	ED	11/8/16, Tues., 7am - 7pm
VCC04	Clerk's Annex	1500 Lomas Blvd NW	ED	11/8/16, Tues., 7am - 7pm
VCC05	Daskalos Center	5339 Menaul Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC06	Fiesta Del Norte Shopping Center	6001 San Mateo Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC07	Four Hills Shopping Center	13140 Central Ave SE	ED	11/8/16, Tues., 7am - 7pm
VCC08	Holly Plaza	6500 Holly Ave NE	ED	11/8/16, Tues., 7am - 7pm
VCC09	Los Altos Plaza	4200 Wyoming Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC10	Los Ranchos Villa	6601 4th St NW	ED	11/8/16, Tues., 7am - 7pm

EXHIBIT "A"
2016 GENERAL ELECTION

EVCC/VCC Location	Address	Early Voting Election Day	Hours of Operation	
VCC11	Bernalillo County Visitor and Cultural Center	6080 Isleta Blvd SW	ED	11/8/16, Tues., 7am - 7pm
VCC12	Petroglyph Plaza	8201 Golf Course Rd NW	ED	11/8/16, Tues., 7am - 7pm
VCC13	South Valley Multipurpose Senior Center	2008 Larrazolo Rd SW	ED	11/8/16, Tues., 7am - 7pm
VCC14	Sun Country Plaza	9421 Coors Blvd NW Suite G & H	ED	11/8/16, Tues., 7am - 7pm
VCC15	Tijeras City Hall	12 Camino Municipal, Tijeras, NM	ED	11/8/16, Tues., 7am - 7pm
VCC16	University of New Mexico	Student Union Building	ED	11/8/16, Tues., 7am - 7pm
VCC17	West Bluff Center	5201 Ouray Rd NW	ED	11/8/16, Tues., 7am - 7pm
VCC18	A Montoya Elementary	24 Public School Rd	ED	11/8/16, Tues., 7am - 7pm
VCC19	Adobe Acres Elementary	1724 Camino del Valle SW	ED	11/8/16, Tues., 7am - 7pm
VCC20	Albuquerque High School	800 Odelia Rd NE	ED	11/8/16, Tues., 7am - 7pm
VCC21	Arroyo Del Oso	6504 Harper Dr NE	ED	11/8/16, Tues., 7am - 7pm
VCC22	Bandelier Elementary	3309 Pershing Ave SE	ED	11/8/16, Tues., 7am - 7pm
VCC23	Bellehaven Elementary	8701 Princess Jeanne Ave NE	ED	11/8/16, Tues., 7am - 7pm
VCC24	Chaparral Elementary School	6325 Milne Rd NW	ED	11/8/16, Tues., 7am - 7pm
VCC25	Cibola High School	1510 Ellison Dr NW	ED	11/8/16, Tues., 7am - 7pm
VCC26	Del Norte High School	5323 Montgomery Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC27	Desiderio Community Center	117 Tribal Rd 7036 ToHajiilee, NM	ED	11/8/16, Tues., 7am - 7pm
VCC28	Double Eagle Elementary	8901 Lowell Dr NE	ED	11/8/16, Tues., 7am - 7pm
VCC29	Duranes Elementary	2436 Zickert Rd NW	ED	11/8/16, Tues., 7am - 7pm
VCC30	Eisenhower Middle School	11001 Camero Rd NE	ED	11/8/16, Tues., 7am - 7pm
VCC31	Eldorado High School	11300 Montgomery Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC32	Forest Meadow	54 Hwy 217, Tijeras 87059	ED	11/8/16, Tues., 7am - 7pm
VCC33	Garfield Middle School	3501 6th St NW	ED	11/8/16, Tues., 7am - 7pm
VCC34	Hayes Middle School	1100 Texas St NE	ED	11/8/16, Tues., 7am - 7pm
VCC35	Herman Sanchez Community Center	1830 William St SE	ED	11/8/16, Tues., 7am - 7pm
VCC36	Highland High School	4700 Coal Ave SE	ED	11/8/16, Tues., 7am - 7pm
VCC37	Holiday Park Community Center	1710 Comanche Rd NE	ED	11/8/16, Tues., 7am - 7pm
VCC38	Hubert Humphrey Elementary	9801 Academy Hills Dr NE	ED	11/8/16, Tues., 7am - 7pm
VCC39	Isleta Elderly Center	Building 79 Tribal Rd 40, Isleta NM	ED	11/8/16, Tues., 7am - 7pm

EXHIBIT "A"
2016 GENERAL ELECTION

EVCC/VCC Location		Address	Early Voting Election Day	Hours of Operation
VCC40	Jackson Middle School	10600 Indian School Rd NE	ED	11/8/16, Tues., 7am - 7pm
VCC41	Jefferson Middle School	712 Girard Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC42	Kennedy Middle School	721 Tomasita St NE	ED	11/8/16, Tues., 7am - 7pm
VCC43	La Cueva High School	7801 Wilshire Ave NE	ED	11/8/16, Tues., 7am - 7pm
VCC44	La Mesa Elementary	7500 Copper Ave NE	ED	11/8/16, Tues., 7am - 7pm
VCC45	Lyndon B Johnson Middle School	6811 Taylor Ranch Rd NW	ED	11/8/16, Tues., 7am - 7pm
VCC46	Madison Middle School	3501 Moon St NE	ED	11/8/16, Tues., 7am - 7pm
VCC47	Manzano High School	12200 Lomas Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC48	Manzano Mesa Elementary	801 Elizabeth St SE	ED	11/8/16, Tues., 7am - 7pm
VCC49	McKinley Middle School	4500 Comanche Rd NE	ED	11/8/16, Tues., 7am - 7pm
VCC50	Montezuma Elementary	3100 Indian School Rd NE	ED	11/8/16, Tues., 7am - 7pm
VCC51	Mountain View Community Center	201 Prosperity Ave SE	ED	11/8/16, Tues., 7am - 7pm
VCC52	Ocate Elementary	12415 Brentwood Hills Blvd NE	ED	11/8/16, Tues., 7am - 7pm
VCC53	Pajarito Elementary	2701 Don Felipe Rd SW	ED	11/8/16, Tues., 7am - 7pm
VCC54	Polk Middle School	2220 Raymac Rd SW	ED	11/8/16, Tues., 7am - 7pm
VCC55	Raymond G. Sanchez Community Center	9800 4th St NW	ED	11/8/16, Tues., 7am - 7pm
VCC56	Rio Grande High School	2300 Arenal Rd SW	ED	11/8/16, Tues., 7am - 7pm
VCC57	Rudolfo Anaya Elementary	2800 Vermejo Park Dr SW	ED	11/8/16, Tues., 7am - 7pm
VCC58	Sandia High School	7801 Candelaria Rd NE	ED	11/8/16, Tues., 7am - 7pm
VCC59	Taylor Middle School	8200 Guadalupe Tr NW	ED	11/8/16, Tues., 7am - 7pm
VCC60	Truman Middle School	9400 Benavides Rd SW	ED	11/8/16, Tues., 7am - 7pm
VCC61	Valle Vista Elementary	1700 Mae Ave SW	ED	11/8/16, Tues., 7am - 7pm
VCC62	Valley High School	1505 Candelaria Rd NW	ED	11/8/16, Tues., 7am - 7pm
VCC63	Van Buren Middle School	700 Louisiana Blvd SE	ED	11/8/16, Tues., 7am - 7pm
VCC64	Ventana Ranch Elementary	6801 Ventana Village Rd NW	ED	11/8/16, Tues., 7am - 7pm
VCC65	Vista Grande Community Center	15 La Madera Rd, Sandia Park, NM	ED	11/8/16, Tues., 7am - 7pm
VCC66	Volcano Vista High School	8100 Rainbow Blvd NW	ED	11/8/16, Tues., 7am - 7pm
VCC67	Washington Middle School	1101 Park Ave SW	ED	11/8/16, Tues., 7am - 7pm
VCC68	West Mesa High School	6701 Fortuna Rd NW	ED	11/8/16, Tues., 7am - 7pm

EXHIBIT "A"
2016 GENERAL ELECTION

EVCC/VCC Location		Address	Early Voting Election Day	Hours of Operation
VCC69	Zuni Elementary	6300 Claremont Ave NE	ED	11/8/16, Tues., 7am - 7pm