



WORKSHOP
City Of Roswell Council
Thursday, January 19, 2023 at 2:00 p.m.
Roswell City Hall - Large Conference Room
425 N. Richardson Ave
Roswell, New Mexico 88201

Notice of this meeting has been given to the public in compliance with Sections 10-15-1 through 10-15-4 NMSA 1978 and Resolution 23-01. Except for emergency matters, the City Council shall take action only on the specific items listed on the Agenda.

January 19, 2023

2:00 p.m.

MAYOR – Timothy Z. Jennings

Ward I
Juan Oropesa
Cristina A. Arnold

Ward II
Jason Perry
Juliana Halvorson

Ward III
Jeanine Best
Edward L. Heldenbrand

Ward IV
Savino Sanchez Jr.
Robert B. Corn

Ward V
Angela G. Moore
Barry Foster

WELCOME! We are very glad you have joined us for the Roswell Special City Council meeting. If you wish to speak, please sign up at the podium prior to 5:00 p.m. In compliance with Resolution 22-14, all matters listed under Consent Items/Consent Agenda are considered routine by the City Council and will be approved by one motion. There will be no separate discussion on these items. If any member of the council desires to discuss the matter, that item will be removed from the consent agenda and will be considered separately. Any item approved as part of the consent agenda is not an agenda item for the purpose of the public participating. The Council is pleased to hear relevant comments; however, a 3-minute limit is set in accordance with Resolution 17-65 (Governing Body Rules of Order). Large groups are asked to name a spokesperson. Robert's Rules of Order govern the conduct of the meeting. "THANK YOU" for participating in your City Government.

CALL TO ORDER

ROLL CALL

NON-ACTION ITEMS

1. Discuss the Administrative Code Ordinance 23-XX (Hessel Yntema)

ADJOURN

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Human Resources at 575-624-6700 at least one week prior to the meeting or as soon as possible. Public documents including the agenda and minutes can be provided in various accessible formats. Please contact the City Clerk at 575-624-6700 if a summary of other type of accessible format is needed. Printed and posted: **Friday, January 13, 2023.**

THE PUBLIC IS ENCOURAGED TO PARTICIPATE ELECTRONICALLY THROUGH THE GO-TO-MEETING APPLICATION AND NOT PHYSICALLY ATTEND DURING THE PANDEMIC.

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ORDINANCE 23-XX

**AN ORDINANCE AMENDING THE ROSWELL CITY CODE REGARDING
LICENSING AND REGULATION OF MASSAGE ESTABLISHMENTS**

WHEREAS, the City of Roswell (the "City") has the authority and obligation under NMSA1978, §3-12-4 to provide for certain appointed officers; and

WHEREAS, the Attorney General in Opinion 22-02 has provided additional guidance on the interpretation of §3-12-4; and

WHEREAS, clarifications and additions regarding appointed officers and City Council procedures to the City’s Administrative Code would be beneficial to efficient and ethical running of City business and will improve accountability and administrative functions of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that:

SECTION 1. Chapter 2 of the Roswell City Code is hereby amended as follows:

ARTICLE II. GOVERNING BODY

DIVISION 1. GENERALLY

Sec. 2-16. Composition.

The governing body shall consist of ten council members plus the mayor.

State law reference(s)—Municipal Code, NMSA 1978, § 3-1-1 et seq.; governing body, NMSA 1978, § 3-12-1 et seq.; size of governing body, NMSA 1978, § 3-13-2.

Cross reference(s)—Elections, ch. 12

Sec. 2-17. Ward boundaries.

- (a) Each council member shall be a qualified municipal elector, residing within the city and within the ward from which they were elected, or which they were appointed to represent. A council member whose residence changes from the ward they were elected or appointed to serve shall be considered to have resigned their position and a replacement shall be selected as provided by law.
- (b) There are hereby created five municipal election wards consisting of the following full and partial precincts:

Ward No.	Chaves County Precincts (or portions thereof lying within the Roswell City Limits)
1	14, 15, 25, 32, 33, 34, 41.002, 41.005, 42, 43, 51, 52.002

2	1.002, 2, 3, 4, 5.002, 6, 7.002, 8, 10.002, 17, 41.005
3	9.002, 11.002, 13, 16, 18, 20, 21.002, 22, 23, 24, 36.002
4	31, 35.001, 35.002, 36.003, 81, 82, 83, 84.001, 85, 93.002
5	61, 62, 63.002, 64, 71, 90, 91, 92.002, 94, 95

In those precincts having residents both within and without the city only persons residing within the city shall vote in municipal elections. The boundaries of each municipal ward are shown on the municipal ward map which is hereby adopted as the official ward map and is to be kept in the custody of the municipal clerk.

(c) The wards created are dual member districts.

(Code 1962 § 2-26; Ord. No. 1145 § 1, 8-1985; Ord. No. 1153 § 3, 11-1985; Ord. No. 01-7, 11-2001; Ord. No. 11-06, 12-2011; Ord. No. 19-10 , § 1, 12-12-2019; Ord. No. 21-11 , § 1, 11-22-2021)

Sec. 2-18. Implementation of districts.

(a) There shall be ten council members with two council members to be elected from each of the five municipal wards.

(b) The mayor shall continue to be elected by the voters of the city at-large.

(c) Council members whose residences are removed from their districts by redistricting shall continue in office for their elected term. Such council members shall, however, continue to reside within the boundary of the district from which they were elected or within the boundary of the redistricted ward. Residence changes other than those identified here shall be considered to be resignations.

(d) The regular term of office for city council members shall be four years.

(Code 1962 § 2-29; Ord. No. 1220, § 2, 12-1991; Ord. No. 1320, 4-1999)

Sec. 2-19. Voting.

City council members shall be voted upon and elected only by qualified electors residing within their respective wards.

(Ord. No. 1145 § 3, 8-1985)

1 **Sec. 2-20. Time of meetings.**

2 The regular meetings of the governing body shall be held at 6:00 p.m. on the second
3 Thursday in each month, or as otherwise indicated on the meeting notice. Any regular meeting or
4 meeting recessed from a regular meeting may be recessed from time to time by the mayor or
5 mayor pro tem.

6 (Ord. No. 1145, § 4, 8-1985; Ord. No. 1216, § 1, 7-1991; Ord. No. 1251, § 1, 6-1994; Ord. No.
7 14-05, 9-11-2014; Ord. No. 21-01, § 1, 4-8-2021)

8 **Sec. 2-21-30. Reserved Duties of chief of police**

9
10 The chief of police or his designee shall attend all meetings of the governing body unless
11 excused by the mayor. He shall execute all summons and requests of the governing
12 body.
13

14 **Secs. 2-22 — 2-30. Reserved.**

15 **DIVISION 2. RULES OF ORDER AND PROCEDURE**

16
17 **Sec. 2-31. Reserved Rules of order.**

18 On any question not mentioned in this division, the regular parliamentary rules shall prevail. The
19 latest edition of Robert's Rules of Order is hereby adopted as the official parliamentary rules and
20 regulations of the governing body. Errors in the strict application of or the failure to follow said
21 rules of order shall not invalidate any action taken by the governing body.
22

23 **Sec. 2-32. Reserved.**

24
25 **Sec. 2-33. Reserved Quorum.**

26 A quorum shall be a majority of the members of the governing body. Should there be no quorum
27 present, only a motion to summon members, compel attendance or adjourn can be entertained.
28

29 **Sec. 2-34. Reserved Manner of addressing presiding officer.**

30 When the governing body is in session, the mayor shall be addressed as "mayor" and the mayor
31 pro tem as "mayor pro tem."
32

33
34 **Sec. 2-35. Reserved Appeals from decision of presiding officer.**

35 A member of council has the right of appeal from the decision of the presiding officer, which shall
36 be decided by a majority vote.
37

38 **Sec. 2-36. Conduct at meetings.**

1 No disorderly conduct or obscene language shall be allowed while the governing body is in session.
2 The presiding officer may have any person removed from the room for violating this section.

3
4 Sec. 2-37. Committees generally.

5
6 (a) The standing committees of the governing body shall be as follows:

- 7 (1) Finance;
8 (2) General services;
9 (3) Infrastructure;
10 (4) Public safety;
11 (5) Legal.

12
13 (b) The standing committees shall consist of four members of the governing body. All
14 members of all committees shall be appointed by the mayor who shall designate the chair and vice
15 chair thereof. Three members of each committee shall comprise a quorum to do business. No
16 standing committee shall form any subcommittee.

17
18 (c) No member of council who is appointed as a chair of any standing committee shall be
19 appointed as chair or vice chair of any other standing committee.

20
21 (d) The mayor may also establish such temporary committees for specific purposes as needed,
22 and appoint the members thereof. Unless otherwise authorized by the governing body, temporary
23 committees shall be advisory only and may make recommendations which are not binding on the
24 governing body.

25
26
27 Sec. 2-38. Reports of standing committees.

28 All ordinances, resolutions of matters referred to standing committees shall be reported on at the
29 next regular meeting of the governing body unless sooner called for at a special meeting.

30
31
32 Sec. 2-39. Roll call votes.

33 Any member of the governing body has the right to demand a vote by roll call on any question.

34
35 Sec. 2-40. Committee assignments and responsibilities.

36 The scope of assignments and responsibilities for the various standing committees in the following
37 sections are descriptive and not intended to be exhaustive or mandatory.

38
39 Sec. 2-41. Finance committee.

40 The finance committee shall review and consider city finances, the city manager's proposed
41 budget, amendments to adopted budgets, the financial aspects of the infrastructure capital
42 improvements plan (ICIP), and financial policies, including those relating to investment, financial

1 contingency management, and purchasing. The finance committee shall also review audits,
2 certified annual financial reports (CAFR), and periodic financial reporting.

3
4 Sec. 2-42. General services committee.

5
6 The general services committee shall review and consider policies that affect operations of the
7 various departments of the city, other than those departments which fall under the public safety
8 committee, including recommending policy changes regarding the provision of city services, fee
9 structures, and operational hours. The general services committee shall also review and consider
10 the award of bids and proposals solicited by the city as required by city policies, resolutions,
11 ordinances and applicable state and federal law.

12
13
14 Sec. 2-43. Infrastructure committee.

15
16 The infrastructure committee shall review and consider proposed actions that concern the physical
17 assets of the city, including vehicles, equipment, buildings, land, water and sewer systems and
18 streets. The infrastructure committee shall propose capital improvement plans.

19
20 Sec. 2-44. Public safety committee.

21
22 The public safety committee shall review and consider policies that affect the operations of the
23 police department, fire department, code enforcement department, 911 dispatch, ambulance
24 services, emergency management and preparedness, animal control, and other public safety
25 programs such as alarm ordinance and neighborhood watch, and fees associated with the provision
26 of the foregoing public safety services. The public safety committee shall also review and consider
27 policies concerning behavioral health issues that were formerly considered by the city's
28 commission on behavioral health.

29
30
31 Sec. 2-45. Legal committee.

32 The legal committee shall review and consider all proposed ordinances, codes, and policies which
33 are adopted by the governing body, as well as issues such as eminent domain and annexation. The
34 legal committee shall also review and consider proposed actions that pertain to development codes
35 or plans which are general and legislative in nature, as opposed to actions which are adjudicatory
36 in nature.

37
38 Sec. 2-46. Validity of actions taken by governing body; referral to committee not a prerequisite.

39
40 A proposed action by the governing body is not required to be referred to a standing or temporary
41 committee for a recommendation before being considered and acted upon by the governing body,
42 and the failure to refer a proposed item to committee prior to action by the governing body shall

1 not affect the validity of any action taken by the governing body. If not referred to the governing
2 body by a committee, four (4) councilors or the mayor may place an item before the governing
3 body.

4 Secs. 2-47—2-50. Reserved.

5
6 ARTICLE III. OFFICERS AND EMPLOYEES

7
8 DIVISION 1. GENERALLY

9
10 Sec. 2-51. Oath.

11
12 Every elected officer and appointed officer shall, before entering upon the duties of his office, take
13 and subscribe the oath specified in Article XX, Section 1, of the state constitution required under
14 state law.

15
16
17 Sec. 2-52. Bonds.

18
19 Bonds executed or given by city officers or employees shall be filed with the clerk ~~treasurer~~, who
20 shall keep it in a secure place. subject, however, at all times to the inspection of the governing
21 body and any taxpayer of the city. The clerk ~~treasurer~~ shall record all bonds in a book to be kept
22 for that purpose.

23
24 Sec. 2-53 Creation of Offices Appointed Officers

25
26 (a) There shall be independent offices apart from City departments. These offices are the office
27 the Clerk, Office of the Treasurer / Finance Officer, Office of the Chief of Police, City Auditor,
28 and Office of the City Attorney.

29
30 (b) The appointive officers of the city shall be a city manager, city clerk, city treasurer / finance
31 officer, chief of police, city auditor, and city attorney.

32
33 (c) The governing body, at its discretion, may in lieu of having an in-house office of the city
34 attorney, contract with an outside individual or law firm for legal services.

35
36 Sec. 2-54 Appointment and Term

37
38 (a) With the exception of the Manager and Auditor, at an organizational meeting of the city council
39 the mayor shall submit for confirmation by the city council, the names of persons who shall fill
40 the various appointive offices of the city or shall serve as members of the various boards or
41 commissions of the city.

1 (b) If the city council fails to confirm any appointment, the mayor at the next regular meeting of
2 the city council shall submit the name of another person to fill such office.

3
4 (c) All officers shall be at-will and every appointive officer shall hold a term provided for under
5 state law.

6
7 Sec. 2-55 Compensation

8
9 The salaries, wages, fringe benefits, and compensation of city officers shall be as provided by the
10 governing body through contract or through a compensation plan determined by the governing
11 body.

12
13 SEC 2-56—2-65. Reserved.

14
15
16 DIVISION 2. CLERK-TREASURER

17
18 Sec. 2-66. DutiesOffices combined.

19
20 (a) The city clerk shall have those duties as prescribed by state law, and in addition thereto and
21 shall have such duties as may be prescribed by the city council.

22
23 (b) The city clerk shall be responsible for the performance, functions, and all personnel of her
24 office.

25 The offices of city clerk and city treasurer may be combined and one person appointed to fill the
26 combined office. Such person shall be referred to in this Code as the clerk treasurer. Should the
27 offices not be combined, the city treasurer shall be appointed as a deputy city clerk and shall
28 conduct all fiscal matters assigned by law to the city clerk. Duties of the separate offices shall be
29 as specified herein, and the required bond shall be executed for each office. All powers and duties
30 now imposed by the legislative acts and ordinances of the city shall not be affected and shall be in
31 full force and effect as to the powers and duties of the person(s) appointed to fill such office(s).

32
33 Sec. 2-67. Licenses Bond required.

34 It shall be the duty of the city clerk to issue all licenses upon receipt of proof of payment of any
35 license fee and compliance with other ordinances. All licenses shall be signed by the city clerk or
36 by an authorized person on behalf of the city clerk. All licenses shall have affixed thereto the city
37 seal. Upon the face of the license shall be designated the purpose for which such license is granted
38 and the length of time the license shall run. The city clerk shall keep and maintain in his office a
39 record, to be known as the license record, which shall be a list of all licenses issued, the purpose
40 of the license, the expiration date thereof, and the amount of money paid therefor.

41
42 The clerk treasurer shall execute and deliver to the city his good and sufficient bond with proper

1 ~~penalty and surety, in the penal sum of at least \$100,000.00, such bond to be conditioned for the~~
2 ~~care and disposition of city funds in his hands and the faithful discharge of the duties of his office,~~
3 ~~according to law.~~

4
5 **Sec. 2-68. Duties as treasurer Seal.**

6
7 The city seal shall be kept in the office of the city clerk and shall be affixed to all instruments and
8 papers which by law or ordinance are required to be attested by the city seal. The city clerk shall
9 have custody of and shall safely keep all public records, documents, ordinances, resolutions and
10 orders of the city council and such other papers and documents as may be delivered into the
11 custody of the city clerk.

12
13 ~~(a) — The clerk treasurer shall receive all money belonging to the city, and shall keep his books~~
14 ~~and accounts in such a manner as may be prescribed by ordinance. Such books and accounts shall~~
15 ~~always be subject to inspection of any member of the governing body. He shall keep a separate~~
16 ~~account of each fund or appropriation and the debts or credits belonging thereto. He shall give~~
17 ~~every person paying money into the treasury a receipt therefor, specifying the date of payment and~~
18 ~~upon what account paid, and he shall file statements of such receipts with the chairman of the~~
19 ~~finance committee at the date of each monthly report. He shall, at the end of each month, and more~~
20 ~~often, if required, render an account to the city council or such officer as may be designated by~~
21 ~~ordinance, showing the state of the treasury. He shall also accompany such accounts with a~~
22 ~~statement of all money received into the treasury, and upon what account, during the preceding~~
23 ~~month, together with all warrants redeemed and paid by him, which warrants, with any and all~~
24 ~~vouchers held by him, shall be delivered to the governing body at the next regular meeting. He~~
25 ~~shall keep a register of all warrants redeemed and paid, which shall describe such warrants and~~
26 ~~show the date, amount, number, the fund from which paid, the name of the person to whom paid~~
27 ~~and when paid. He may be required to keep all money in his hands belonging to the city in such~~
28 ~~place of deposit as may be designated by ordinance; provided, that no such ordinance shall be~~
29 ~~passed by which the custody of such money shall be taken from him. He shall keep all money~~
30 ~~belonging to the city in his hands, separate and distinct from his own money, and he is hereby~~
31 ~~expressly prohibited from using, either directly or indirectly, the city money or warrants in his~~
32 ~~hands for his own use or benefit, or that of any other person whomsoever.~~

33 ~~(b) — The clerk treasurer shall report to the finance committee, as often as required, a full and~~
34 ~~detailed account of all receipts and expenditures of the city, as shown by his books up to the time~~
35 ~~of his report, and he shall annually, in the month of July, make out and file a full and detailed~~
36 ~~account of all such receipts and expenditures and all his transactions as such treasurer during the~~
37 ~~preceding fiscal year.~~

38
39 **Sec. 2-69. Duties as clerk Deputy Clerks.**

40
41 The mayor and city council may appoint one or more deputy clerks pursuant to NMSA 1978, § 3-
42 12-4.

1
2 It shall be the duty of the clerk treasurer to record all proceedings of the governing body in a book
3 provided for that purpose and to record all ordinances in the ordinance book and all resolutions in
4 the book to be known as the resolution book. He shall make out all licenses to be issued under
5 ordinances of the city, and countersign the same under the city seal; before issuing any license, he
6 shall present the same to the mayor for his signature and approval. He shall keep a full and
7 complete record of warrants and licenses, with the names of the parties to whom issued, including
8 dates, amounts and numbers, and the purpose for which issued, and shall, on the first day of each
9 month, or as soon thereafter as the same can be completed, and at such other times as the governing
10 body may require, prepare a full and complete report of all warrants and licenses issued and of all
11 money collected belonging to the city, and of all other transactions of his office during the month
12 preceding such report, and shall submit the same to the governing body at its first regular meeting
13 in each month. He shall be the keeper of the city seal, and shall affix the seal to all instruments
14 which are required to be attested by the city seal. He shall have the custody of and safely keep all
15 records and documents of the city except as otherwise provided by law. In addition to the duties
16 above enumerated he shall perform such other duties as may be enjoined upon him by ordinance.
17

18 Secs. 2-70—2-80. Reserved.
19

20 DIVISION 3. CITY MANAGER 21

22 Sec. 2-81. Appointment; authority and responsibility. City Manager; Creation of office;
23 appointment; powers and duties generally; qualifications.
24

25 (a) The office of city manager is created pursuant to NMSA 1978, § 3-13-3.
26

27 (b) The city manager shall be the Chief Administrative Officer of the City and have all of the
28 powers and duties as set out in NMSA 1978, § 3-13-3.
29

30 (c) The manager shall work in conjunction the other appointed officers to effectuate the policies
31 and goals of the governing body.
32

33 (d) The manager shall consult with the other appointed officers when taking any employment
34 action, such as hiring, promoting, demoting, disciplining, or discharging, against employees that
35 are part of the administrative service in the respective offices.
36

37 (e) The manager may create or reorganize the City's departments as necessary with the consent of
38 the governing body. The deputy city manager and directors of departments shall be nominated by
39 the manager for approval by the governing body. If approved, the deputy manager and directors
40 will be employed through the manager.
41

42 The city manager shall be appointed by the mayor, with the consent of the governing body, and

1 ~~shall be the principal administrative officer of the city. He shall be responsible to the governing~~
2 ~~body for the proper administration of all affairs of the city.~~

3
4 Sec. 2-82 Deputy City Manager

5
6 There shall be a Deputy City Manager who may exercise the powers and duties granted the
7 manager in the absence or disability of the manager and as assigned by the manager.

8
9 Sec. 2-82 Bond

10
11 The city manager, within ten days after his appointment, shall furnish a surety bond approved by
12 the city council, with such bond to be conditioned upon the faithful performance of his duties. The
13 premium of the bond shall be paid by the city.

14
15 Sec. 2-83 Reserved

16
17 DIVISION 4. CITY ATTORNEY

18
19 Sec. 2-84 Qualifications

20
21 The City Attorney shall be admitted to the practice of law by the supreme court of the state, and
22 he shall be in good standing in the State Bar of New Mexico. He shall have at a minimum 6 years
23 of previous full time legal practice.

24
25 Sec. 2-85 Duties

26
27 The city attorney shall:

28
29 (a) be the chief legal officer of the City and legal adviser to the governing body. He shall attend
30 all regular meetings of the council and such other meetings of the council as he shall be requested
31 to attend by the mayor. He shall have the right to be heard at any meeting of the council at which
32 matters involving questions of law are being discussed. He shall render to the council his opinion
33 upon any question of law involving the interests of the city at all times when requested by the
34 council to do so. He shall draft and prepare all contracts to be entered into by the city and shall
35 submit the contracts to the council for its approval, whenever requested by the council to do so.
36 He shall draft and prepare all city ordinances and shall submit the ordinances to the council for its
37 approval, whenever requested by the council to do so.

38
39 (b) draft and prepare all process and papers for the use of police officers in the carrying out by
40 them of the duties of their office, whenever requested by the police chief to do so. He shall
41 prosecute all actions brought in the municipal court on behalf of the city, whenever requested by
42 the municipal judge to do so or whenever in his judgment it is for the general welfare of the city

1 that any such action should be so prosecuted.

2
3 (c) supervise and pass upon the legality as to the manner and form of all bonds to be given by any
4 city officer or by any person entering into such a contractual relationship with the city as requires
5 the giving of a bond to the city.

6
7 (d) perform any other duties that are required by the governing and customary to the practice of
8 law.

9
10 (e) the City Attorney shall be responsible for the performance, functions, and all personnel of her
11 office.

12 13 DIVISION 5. TREASURER / FINANCIAL OFFICER

14 15 Sec. 2-86 Qualifications

16
17 The Treasurer/Financial Officer shall have at minimum a bachelor's degree in accounting, be a
18 CPA, or hold an advanced degree in an accounting or finance related field. The Treasurer/Financial
19 Officer shall also have 10 years of previous work in accounting, finance, or a related field.

20 21 Sec. 2-87 Duties.

22
23 (a) The Treasurer/Financial Officer shall be chief financial officer for the City.

24
25 (b) The treasurer shall receive all money belonging to the city, and shall keep his books and
26 accounts in such a manner as may be prescribed by law. Such books and accounts shall always be
27 subject to inspection of any member of the governing body. He shall keep a separate account of
28 each fund or appropriation and the debts or credits belonging thereto. He shall give every person
29 paying money into the treasury a receipt therefor, specifying the date of payment and upon what
30 account paid, and he shall file statements of such receipts with the chairman of the finance
31 committee at the date of each monthly report. He shall, at the end of each month, and more often,
32 if required, render an account to the city council or such officer as may be designated by ordinance,
33 showing the state of the treasury. He shall also accompany such accounts with a statement of all
34 money received into the treasury, and upon what account, during the preceding month, together
35 with all warrants redeemed and paid by him, which warrants, with any and all vouchers held by
36 him, shall be delivered to the governing body at the next regular meeting. He shall keep a register
37 of all warrants redeemed and paid, which shall describe such warrants and show the date, amount,
38 number, the fund from which paid, the name of the person to whom paid and when paid. He may
39 be required to keep all money in his hands belonging to the city in such place of deposit as may be
40 designated by ordinance; provided, that no such ordinance shall be passed by which the custody
41 of such money shall be taken from him. He shall keep all money belonging to the city in his hands,
42 separate and distinct from his own money, and he is hereby expressly prohibited from using, either

1 directly or indirectly, the city money or warrants in his hands for his own use or benefit, or that of
2 any other person whomsoever.

3
4 (c)The treasurer shall report to the finance committee, as often as required, a full and detailed
5 account of all receipts and expenditures of the city, as shown by his books up to the time of his
6 report, and he shall annually, in the month of July, make out and file a full and detailed account of
7 all such receipts and expenditures and all his transactions as such treasurer during the preceding
8 fiscal year.

9
10 (d) The Treasurer/Financial Officer shall be responsible for the performance, functions, and all
11 personnel of his office.

12 13 Sec. 2-88 Bond

14
15 The Treasurer shall execute and deliver within ten days after appointment a surety bond of no more
16 than \$50,000.00 to be approved by the city council, with such bond to be conditioned upon the
17 faithful performance of the office's duties. The premium of the bond shall be paid by the city.

18 19 DIVISION 5. CHIEF OF POLICE

20 21 Sec. 2-89 Qualifications

22
23 The Chief of Police shall have at least 15 years of law enforcement experience.

24 25 Sec. 2-90 Duties

26
27 (a)The chief of police shall be responsible for executing the duties prescribed in § 3-13-2 and
28 faithfully enforce the ordinances of the city. He shall keep such records and make such reports
29 concerning the activities of his department as may be required by statute or by the city council.

30
31 (b)The chief shall be responsible for the performance of police department functions, and all
32 personnel of the police department.

33 34 Sec. 2-91 Bond

35
36 The city manager, within ten days after his appointment, shall furnish a surety bond approved by
37 the city council, with such bond to be conditioned upon the faithful performance of his duties. The
38 premium of the bond shall be paid by the city.

39
40 Secs. 2-92—2-95. Reserved.

41 42 DIVISION 5. CITY AUDITOR

1
2 Sec. 2-96 Selection and Qualifications

3
4 (a) The mayor shall post an opening and receive applications for the position of City Auditor.

5
6 (b) The mayor's recommendation to governing body shall be based on the candidates' integrity and demonstrated ability in accounting, auditing, financial analysis, law, management and system analysis, public administration, investigation, criminal justice administration or other closely related fields.

7
8
9
10
11 (c) Minimum qualifications shall be:

12
13 (1) At least seven (7) years in any one or a combination of the following fields: federal, state or local law enforcement officer/official; federal or state court judge; federal, state, or local government attorney with experience in investigating fraud, mismanagement or corruption; an inspector general, certified public accountant, or internal auditor; a person with progressive supervisory and managerial experience in an investigative public agency;

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19 (2) Demonstrated ability to work with local, state or federal law enforcement agencies and the judiciary;

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21
22 (3) A bachelor's degree from an accredited institution of higher learning. A master's degree or higher is preferred.

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25 Sec. 2-97 Duties and Jurisdiction

26
27 (a)The Auditor shall have the authority to investigate, either by request or self-initiated, municipal matters that involve elected or appointed officials, employees, municipal agencies and instrumentalities, contractors, their subcontractors, and other parties doing business with the city or receiving city funds.

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32 (b)The Auditor is authorized to audit, inspect, evaluate, and investigate the activities, records, and individuals affiliated with contracts and procurements undertaken by the city and any other official acts or function of the city.

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36 (c)The office of the city attorney shall advise and represent the office of city auditor. However, the auditor, in consultation with the city attorney, may select independent legal counsel to advise and represent the office of internal audit as needed in the event of a conflict of interest that the city attorney determines cannot be otherwise cured under the New Mexico Rules of Professional Conduct.

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42 (d)The Auditor shall have the power to subpoena witnesses, administer oaths and require the

1 production of records subject to the New Mexico Rules of Civil Procedure. In the case of a refusal
2 to obey a subpoena issued to any person, the city attorney may make application to any court in
3 the state that shall have the jurisdiction to order a witness to appear before the Auditor and to
4 produce evidence if so ordered, or to give testimony on the matter in question.

5
6 (e) The city manager shall have no authority to limit the scope of the auditor's investigations.

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8 (f) The city attorney, shall have no authority to limit the scope of the auditor's investigations unless
9 such investigation would interfere with another federal, state or local agency's criminal
10 investigation or an investigation otherwise mandated by state or federal law, or would be a
11 violation of law or court order, or violate existing collective bargaining agreements or laws as they
12 relate to employment or contracts.

13
14 (g)If, after or during the course of an investigation the auditor determines that there is reason to
15 believe that a criminal act occurred, the inspector general shall refer such complaint to the
16 appropriate prosecuting authority or law enforcement agency.

17
18 (h)The Auditor shall not investigate complaints that are under the jurisdiction of the police
19 department internal affairs division or fire department internal affairs, nor shall the inspector
20 general access any internal affairs files.

21
22 (i) The inspector general shall not unilaterally accept or investigate complaints related to
23 discrimination or labor law or other matters that are the subject of pending or threatened litigation.

24
25 (j)The Auditor shall not investigate complaints that are under the jurisdiction of the police
26 department internal affairs division or fire department internal affairs, nor shall the inspector
27 general access any internal affairs files.

28
29 (k)Neither the city auditor nor any employee of the office of city audit shall engage in any partisan
30 political activities or the political affairs of the city during working hours.

31
32 Sec. 2-98 Professional Standards

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34 (a)The office of audit will comply with the Institute of Internal Auditors International Standards
35 for the Professional Practice of Internal Auditing and to the Association of Inspector General's
36 Professional Standards as applicable.

37
38 Sec. 2-99. Reports to the Governing Body.

39
40 (a) Each investigation shall result in a written final report to the governing body. The auditor shall
41 submit copies of each report to the Committee and shall retain a copy as a permanent record.
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1 (b) The auditor's report shall include:

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3 (1) Specific citations to the law or policy that was allegedly violated;

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5 (2) An assessment of the validity of the allegations under investigation, including whether the
6 allegations are criminal or civil in nature;

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8 (3) A list of the employee or official's supervisors;

9
10 (4) A description of any corrective action or discipline to date;

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12 (5) If the case of a criminal violation, an evaluation of the likelihood of successful prosecution;

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14 (6) A summary of all of the direct and circumstantial evidence supporting the allegations; and

15
16 (7) A description of which prosecutorial agencies may be contacted, have been involved or
17 may be contacted.

18
19 SECTION 2. All ordinances or parts of ordinances in conflict or inconsistent herewith are hereby
20 repealed to the extent of such inconsistency. This repealer shall not be construed to revive any
21 ordinance or part of any ordinance heretofore repealed.

22
23 SECTION 3. If any section, paragraph, clause or provisions of this ordinance for any reason shall
24 be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph,
25 clause or provision shall not affect any other part of this ordinance.

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28 SECTION 5. This ordinance shall be effective after five (5) days following its publication as
29 required by law.

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31 PASSED, ADOPTED, SIGNED and APPROVED _____, _____.

32
33 CITY SEAL

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36
37 _____
Timothy Z. Jennings, Mayor

38 ATTEST

1 Amalia Martinez, Interim City Clerk
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DRAFT

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY



GENERAL

HECTOR H. BALDERAS
ATTORNEY GENERAL

June 23, 2022

The Honorable Candy Spence Ezzell
New Mexico State Representative
P.O. Box 2125
Roswell, NM 88202

Re: Authority of City Manager in a Mayor-Council Municipality

Dear Representative Ezzell:

You have requested an opinion regarding the scope of authority exercised by the mayor and city manager in a mayor-council municipality that has provided for a city manager by ordinance. In particular, you ask:

1. Are the municipal offices of clerk, municipal attorney, police officer, treasurer and manager part of the “administrative service” under NMSA 1978, Section 3-14-14(B)?
2. If not, does a person hired for one of those positions by the city manager have legal authority to perform the duties of the position?
3. May the city manager eliminate the office of clerk and require the person holding the position of clerk to report to the city attorney?
4. May the city manager unilaterally change the salary and benefits package provided to appointed officers?
5. What responsibility does the city manager have to report to and execute the policy decisions of the city council?
6. (A) Do the mayor’s law enforcement functions under NMSA 1978, Section 3-11-4 mean that enforcement actions or prosecutions of city ordinances rest with the discretion of the mayor? Is the mayor ultimately responsible for exercising prosecutorial discretion?

(B) Does the city manager have similar, concurrent or superseding authority under state law?

As discussed below, based on our examination of the applicable constitutional, statutory and case law authority and information provided with the request, we conclude:

1. The municipal offices of clerk, city attorney, police officer, treasurer and manager are not part of the “administrative service” under NMSA 1978, Section 3-14-14(B).
2. The Municipal Code does not give the city manager authority to fill appointed municipal offices.
3. The city manager has no authority to eliminate or change the duties of the office of clerk.
4. The city manager has no authority to make unilateral changes to the salary and benefits of appointed municipal officers.
5. The city manager serves at the pleasure of the city council and, like other municipal officers, is responsible for reporting to and carrying out the policy decisions of the council.
6. (A) Enforcement actions and prosecutions of persons who violate city ordinances do not rest with the discretion of the mayor. The mayor does not have responsibility for exercising prosecutorial discretion.

(B) The city manager’s authority to enforce municipal ordinances and regulations is narrower than that conferred on the mayor under NMSA 1978, § 3-11-4.

“Administrative Service” Under Section 3-14-14 of the Municipal Code

The Municipal Code permits the governing body of a municipality with a mayor-council form of government to provide for a manager by ordinance or election. NMSA 1978, § 3-13-3 (1991). The office of city manager carries “the same qualifications, duties and responsibilities as provided for a manager under Sections 3-14-13 through 3-14-15 [of the Municipal Code].” *Id.*

Sections 3-14-13 through -15 are part of the Municipal Code applicable to municipalities with a commission-manager form of government. In pertinent part, they provide that:

- the manager is the chief administrative officer and serves indefinitely until a vacancy is created by death, resignation or removal by the governing body. NMSA 1978, § 3-14-13 (1965);

- the manager’s duties include: “enforc[ing] and carry[ing] out all ordinances, rules and regulations enacted by the [governing body] and “employ[ing] and discharg[ing] all persons engaged in the administrative service of the municipality.” *Id.* § 3-14-14(A)(1), (2) (1965); and
- the governing body may divide the municipality’s administration “into as many departments” as it “deem[s] desirable,” and “each department shall be under the charge of a person employed by the manager.” *Id.* § 3-14-15 (1965).

Your first four questions concern the scope of the city manager’s authority to “employ and discharge persons engaged in the administrative service” and its applicability to appointed officers. The Municipal Code does not define “persons engaged in the administrative service,” as used in Section 3-14-14(A). Absent a statutory definition, the meaning of a “word or phrase ... is determined by its context, the rules of grammar and common usage.” NMSA 1978, § 12-2A-2. When interpreting the language used in a statute, courts “read the entire statute as a whole so that each provision may be considered in relation to every other part.” *New Mexico Pharm. Ass’n v. State*, 1987–NMSC–054, ¶ 8, 738 P.2d 1318.

Section 3-12-4 of the Municipal Code requires the governing body of a municipality to provide for the offices of clerk, treasurer and police officer (generally referred to as the chief of police) and permits the governing body to provide for the office of attorney and for deputy appointed officials. The city council is charged with “prescrib[ing] the powers and duties of those officers whose terms of office or powers and duties are not defined by law, and impos[ing] additional powers and duties upon those officers whose powers and duties are prescribed by law.” *Id.* § 3-12-3(A)(9).

Subject to the approval of the governing body, the mayor appoints “all officers and employees except those holding elective office.” *Id.* § 3-11-6(A). *See also* § 3-11-5(A) (at the organizational meeting following a municipal election, the mayor “submit[s], for confirmation by the governing body, the names of persons who shall fill the appointive officers and ... who shall be employed by the municipality”). “Subject to the limitation of a merit system ordinance,” the governing body, or the mayor with the approval of the governing body, may discharge an appointed official or employee.” *Id.* § 3-11-6(D). New Mexico courts have interpreted the limitation imposed by a merit system ordinance in Section 3-11-6(D) to apply only to employees. *Webb v. Village of Ruidoso Downs*, 1994-NMCA-026, ¶¶ 9, 11, 871 P.2d 17 (municipality had no authority to apply its merit system ordinance to village clerk-treasurer appointed under 3-12-4).

Reading Section 3-14-14(A) in the context of the above provisions, we conclude the phrase “persons engaged in the administrative service of the municipality” can reasonably be interpreted to refer to employees who carry out the daily operations of the municipality and to exclude appointed municipal officers. The legislature has provided the governing body of a municipality with authority to appoint officers and to prescribe their powers and duties. Appointed officers serve at the pleasure of the governing body and, unlike municipal employees, are not be protected by a merit system ordinance. The governing body’s direct authority over appointed officials under

current law is inconsistent with an interpretation of Section 3-14-14(A) that allows one appointed officer - the city manager - to supervise, “employ and discharge” all other appointed officers. Had the legislature intended that interpretation, we believe it would have used language expressly including appointed municipal officers among the “persons engaged in the administrative service of the municipality” under the supervision of the city manager. *See also* N.M. Att’y Gen. Op. No. 87-69 (1987) (concluding that a proposed municipal ordinance providing for a city manager properly defined “administrative service” to exclude “all appointed officers”).

For the reasons discussed above, our answers to your first four questions are as follows:

1. The municipal offices of clerk, municipal attorney, police officer, treasurer and manager are *not* part of the “administrative service of the municipality” under NMSA 1978, Section 3-14-14(B).

2. Because appointed offices are not part of the administrative service of the municipality, the city manager has no authority to fill them. An appointment by the city manager would be vulnerable to legal challenge, unless the appointment was approved or ratified by the mayor and city council under Section 3-11-6(A). *See Sanchez v. City of Belen*, 1982-NMCA-070, ¶ 11, 644 P.2d 1046 (city council’s ratification of allegedly illegal discharge by the city manager “was sufficient by itself to terminate [the person’s] employment under § 3-11-6(D)(1)”).

3. The city manager has no legal authority to eliminate the office of city clerk. The office of city clerk is not included in the administrative service of the municipality, and the office and its duties are prescribed by law. NMSA 1978, §§ 3-12-4, 3-13-1. The city council is permitted to impose additional powers and duties on the office of city clerk, *id.* §§ 3-12-3(A)(9), but only the legislature has the power to eliminate the office or change its statutorily-imposed duties.

4. The city manager has no authority to change the salary and benefits of persons holding appointed offices without the approval of the city council.

City Manager’s Responsibility for Executing Policy Decisions of the City Council

The city manager is the chief administrative officer. NMSA 1978, § 3-14-13. Like other appointed officers in a mayor-council form of government, the city manager is appointed by the mayor, with the approval of the city council. *Id.* § 3-11-6(A). The city manager serves “an indefinite term ... until a vacancy is created by death, resignation or removal” by the governing body. *Id.* § 3-14-13. *See also* N.M. Att’y Gen. Op. No. 87-69 (1969) (noting that Section 3-14-13 “merely reiterates the [city] council’s power to discharge a [city] manager pursuant to section 3-11-6(D)(1)”).

The absence of a definite term and the governing body’s removal authority “is tantamount to saying that the manager holds office at the pleasure of the [city council].” 1957 N.M. Att’y Gen. Op. No. 57-126 (1957) (reviewing a predecessor provision to Section 3-14-13). *See also Trujillo v. Northern Rio Arriba Electric Coop., Inc.*, 2002-NMSC-004, ¶ 22, 41 P.3d 333 (“[e]mployment

without a definite term is presumed to be at will”). These provisions make the city manager accountable to the mayor and city council, and responsible for carrying out the council’s policy decisions consistent with the council’s expectations. *See also* N.M. Att’y Gen. Op. No. 79-28 (1979) (city manager “operates under the superior power or control of the governing body”).

Law Enforcement Responsibilities of the Mayor and City Manager

A. Authority of the Mayor Under Section 3-11-4

In pertinent part, Section 3-11-4 of the Municipal Code provides that the mayor, as chief executive officer, shall:

- A. cause the ordinances and regulations of the municipality to be obeyed; [and]
- B. exercise, within the municipality, powers conferred upon sheriffs of counties to suppress disorders and keep the peace....

A mayor’s authority to exercise “powers conferred upon sheriffs of counties to suppress disorders and keep the peace” gives the mayor some law enforcement functions, but does not make the mayor a law enforcement officer. *See, e.g., Montes v. Gallegos*, 812 F.Supp.1165, 1172 (D.N.M. 1992) (holding that a mayor is not a law enforcement officer for the purpose of waiver of immunity under the Tort Claims Act). The mayor does not have authority to make arrests, hold people in custody, or otherwise “directly impact public order.” *Dunn v. McFeeley*, 1999-NMCA-084, ¶ 25, 984 P.2d 760 (citing *Montes v. Gallegos*).

Judicial opinions addressing the mayor’s law enforcement authority generally support a mayor’s actions to “suppress disorders and keep the peace” indirectly through the police. For example, the New Mexico Supreme Court has held that a mayor who has probable cause to believe that a crime is being committed in his presence may order a police officer to make an arrest. *Cherry v. Williams*, 1957-NMSC-08, 316 P.2d 880. Similarly, a mayor might arrange for police officers to be present in situations where the mayor believes a disturbance or disruption of the peace might occur, such as a public protest or controversial meeting of the city council. *See Salazar v. Town of Bernalillo*, 1956-NMSC-125, ¶ 11, 307 P.2d 186 (a mayor has “power and authority to direct the deputy marshal to enforce the peace and quell disturbances...”).

The limited law enforcement functions conferred under Section 3-11-4 do not give the mayor discretionary authority over enforcement actions against or prosecutions of persons who violate city ordinances. As noted above, Section 3-12-4 requires a municipal governing body to appoint a police chief and, in Section 3-13-2, the legislature has provided police officers with separate and independent authority to enforce municipal ordinances. In particular, Section 3-13-2(A)(4)(d) states that a police officer “shall ... within the municipality apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring him before competent authority for examination and trial.” *See also* NMSA 1978, § 3-13-2(B) (“a police officer shall have the same powers and be subject to the same responsibilities as sheriffs in similar cases”).

Nothing in these provisions suggest that a municipal law enforcement officer's authority and responsibility to enforce municipal ordinances are subject to the mayor's discretion.

The mayor does not have prosecutorial discretion. Prosecutorial discretion generally rests with a person, usually an attorney such as the attorney general, a district attorney or municipal attorney, who prosecutes criminal cases on behalf of the government. Prosecutorial discretion is the "power to choose from the options available in a criminal case, such a filing charges, prosecuting, not prosecuting, plea bargaining, and recommending a sentence to the court." *Black's Law Dictionary* (11th ed. 2019). *See also State v. Estrada*, 2001-NMCA-034, ¶ 10, 24 P.3d 793 ("if the prosecutor has probable cause to believe that an accused has committed a crime, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests within the prosecutor's discretion").

B. Authority of the City Manager

The city manager's authority to enforce municipal ordinances and regulations is narrower than the mayor's. Specifically, the city manager is authorized to "enforce and carry out all ordinances, rules and regulations" enacted by the city council, NMSA 1978, § 3-14-14(A)(1), but has no authority to "exercise ... powers conferred upon sheriffs of counties to suppress disorders and keep the peace" within the municipality.

Please be advised that our response to your opinion request is a public document and is not protected by attorney-client privilege. If this office may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,



Sally Malavé
Assistant Attorney General
Director, Open Government Division

CC: Mayor Tim Jennings, City of Roswell
A.J. Forte, Director of the NM Municipal League