

# CITY of ALBUQUERQUE

## TWENTY FOURTH COUNCIL

COUNCIL BILL NO.     F/S O-20-13     ENACTMENT NO.     0-2020-019    

SPONSORED BY:     Diane G. Gibson, by request

ORDINANCE

1  
2 AMENDING ARTICLE XII, SECTION XIII, SECTION 1 OF THE CITY CHARTER;  
3 ARTICLE XIII, SECTIONS 4, 5, 9, AND 10 OF THE CITY CHARTER; ARTICLE  
4 XVI, SECTIONS 6 AND 16 OF THE CITY CHARTER; CHAPTER 2, ARTICLE 3,  
5 SECTION 8, ROA 1994; AND CHAPTER 2, ARTICLE 4, SECTION 13 ROA 1994  
6 TO: MODIFY THE FREQUENCY THE BOARD OF ETHICS MUST MEET;  
7 ELIMINATE THE BOARD OF ETHICS REQUIRED REPORT SUBMITTED TO THE  
8 MAYOR AND CITY COUNCIL AND THE NEED FOR THE BOARD TO CONTRACT  
9 WITH OUTSIDE COUNSEL TO WRITE ADVISORY OPINIONS; GRANT THE  
10 BOARD OF ETHICS CHAIRMAN AUTHORITY TO AVOID DISMISSAL OF AN  
11 UNRESOLVED COMPLAINT UPON A SHOWING OF GOOD CAUSE; REMOVE  
12 THE MANDATORY MEETING BETWEEN CANDIDATES AND THE BOARD OF  
13 ETHICS AND CAMPAIGN PRACTICES ON THE FRIDAY BEFORE AN  
14 ELECTION; UPDATE WHEN AND WITH WHOM CAMPAIGN MATERIAL IS TO  
15 BE FILED; CHANGING THE REQUIREMENTS FOR THE CAMPAIGN AND  
16 ELECTION AUDITOR; UPDATE THE ENFORCEMENT PROVISIONS TO  
17 REMOVE DUPLICATION WITH THE RULES OF THE BOARD OF ETHICS AND  
18 TO CLARIFY THAT A CANDIDATE IS SUBJECT TO THE ENFORCEMENT  
19 PROVISIONS FOR FAILURE TO PAY A PENALTY TO THE CITY CLERK;  
20 CLARIFYING WHEN APPLICANT CANDIDATES CAN ACCEPT SEED MONEY;  
21 REMOVING THE MATCHING FUNDS PROVISION OF THE CITY CHARTER;  
22 ALIGNING LOBBYIST DISCLOSURES WITH THEIR REQUIRED QUARTERLY  
23 ACTIVITY REPORTS; ADJUSTING DEADLINE FOR MAYORAL AND  
24 COUNCILOR CANDIDATES TO SUBMIT QUALIFYING PETITIONS TO THE CITY  
25 TO ACCOUNT FOR CHANGES IN STATE LAW.

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1       **WHEREAS, in 2001 the City of Albuquerque adopted the Lobbyist and**  
2 **Lobbyist Organization Registration and Disclosure Ordinance; and**  
3       **WHEREAS, the Lobbyist and Lobbyist Organization Registration and**  
4 **Disclosure Ordinance was last amended in 2019; and**  
5       **WHEREAS, the City seeks to encourage transparency and accountability in**  
6 **government; and**  
7       **WHEREAS, the City intends to unify and simplify its processes whenever**  
8 **practicable.**  
9 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
10 **ALBUQUERQUE:**  
11  
12 **SECTION 1. Article XII, Section 3 is amended as follows:**  
13 **CITY CHARTER, ART. XII, CODE OF ETHICS**  
14 **Section 3. BOARD OF ETHICS AND CAMPAIGN PRACTICES.**  
15       **(f) The Board shall:**  
16           **(1) meet as necessary;**  
17           **(2) receive and investigate complaints regarding possible violations**  
18 **of the Code of Ethics, the Election Code, the Open and Ethical Elections Code,**  
19 **and/or rules promulgated by the Board and/or the City Clerk;**  
20           **(3) hold hearings when necessary to determine whether there has**  
21 **been a breach as alleged in a complaint;**  
22           **(4) contract for professional services through the City Clerk as**  
23 **necessary to carry out duties;**  
24           **(5) provide the Mayor and City Council with a report following each**  
25 **municipal election year stating the number of complaints that were submitted**  
26 **to the City Clerk alleging a violation of the Code of Ethics, the Election Code,**  
27 **the Open and Ethical Elections Code, and/or rules promulgated by the Board**  
28 **and/or the City Clerk, the number of complaints submitted to the Board by the**  
29 **City Clerk, and a summary of the status of each complaint to include the date**  
30 **of the complaint, the date for the case to be heard, and date for possible final**  
31 **action. The report called for in this section shall be submitted to Council by no**  
32 **later than the July after each municipal election year, and shall also include**  
33 **any recommendations regarding amendments to city ethics or public**

1 accountability laws, and recommendations regarding the scope of the Board  
2 and/or City Clerk's powers and duties. The annual status reports must be  
3 approved by the Board and made available to the public on the City Clerk's  
4 website. Status reports may be provided to Mayor and City Councilors and  
5 their staff on an informal basis as appropriate.

6 . . .

7 (h) The Board may issue to candidates, officials, and lobbyists advisory  
8 opinions concerning the Code of Ethics, the Election Code, the Open and  
9 Ethical Elections Code, and rules promulgated by the Board and/or the City  
10 Clerk. Candidates and officials shall make all requests for advisory opinions in  
11 writing to the City Clerk. Draft advisory opinions may be prepared by Board  
12 members for consideration by the Board, or may be assigned to an outside,  
13 independent legal counsel for preparation. The City Clerk shall maintain a  
14 contract with outside, independent legal counsel during each election cycle  
15 for this purpose. Any draft advisory opinions shall be submitted to the Board  
16 of Ethics for consideration of approval within fourteen (14) days of a written  
17 request for advisory opinion being received by the City Clerk. Within thirty (30)  
18 days of receiving the proposed advisory opinion, the Board shall vote to adopt  
19 or decline to adopt the proposed advisory opinion as written. If the Board of  
20 Ethics declines the proposed advisory opinion, the Board of Ethics will either  
21 direct the City Clerk, Board member, or outside counsel to amend the  
22 proposed opinion as appropriate or to draft a new advisory opinion for  
23 consideration for adoption at its next meeting, which shall be held within  
24 fourteen (14) days. Official advisory opinions will be issued only upon the  
25 Board's approval. All timeframes noted in this subsection are mandatory  
26 unless the City Clerk or the Board notifies the requester in writing of a delay in  
27 issuance and with specificity as to that request, the reason for the delay, and  
28 continues to notify the requester in writing every thirty (30) days until the  
29 advisory opinion is issued, which in all cases shall be within one hundred  
30 eighty (180) days of the request.

31 An advisory opinion shall become public record at the time the Board votes  
32 on such opinion. Advisory opinions shall only concern prospective matters.  
33 Specifically, no advisory opinion shall be issued with respect to an event that

1 has already occurred. Advisory opinions shall only be issued with respect to  
2 conduct in which the requestor of the opinion intends to engage. No advisory  
3 opinion shall be given unless approved by four members of the Board.  
4 Approved opinions shall be kept as permanent records by the City Clerk. The  
5 Board may promulgate rules and regulations establishing procedures for  
6 issuing advisory opinions and limitations on the use of advisory opinions as a  
7 defense to violations of the Code of Ethics or the Election Code. The Board  
8 may issue consent orders and may promulgate rules and regulations  
9 establishing procedures of issuance of consent orders.

10 (i) **Limitations on Complaints.**

11 (3) All complaints referred to the Board by the City Clerk at any  
12 time prior to sixty (60) days before election day shall be resolved, determined,  
13 or dismissed by the Board within sixty (60) days from the referral of the  
14 complaint. If the complaint is not resolved within sixty (60) days, the complaint  
15 shall be dismissed, unless delayed by the Chair of the Board upon a showing  
16 of good cause.

17 (4) All complaints referred to the Board by the City Clerk during  
18 the sixty (60) day period preceding election day shall be resolved, determined,  
19 or dismissed by the Board within thirty (30) days from the referral of the  
20 complaint. If the complaint is not resolved within thirty (30) days, the  
21 complaint shall be dismissed, unless delayed by the Chair of the Board upon a  
22 showing of good cause.

23  
24 **SECTION 2. Article XIII, Sections 4, 5, 9, and 10 are amended as follows:**

25 **CITY CHARTER, ART. XIII, ELECTION CODE**

26 **Section 4. CAMPAIGN FINANCING.**

27 (i) **Campaign Finance Records.**

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29 **Section 5. CAMPAIGN MATERIALS.**

30 Each candidate and each chairperson of each Measure Finance Committee  
31 shall ensure that all campaign materials specify the name of the campaign or  
32 committee who authorized the printing or distribution of such material and the  
33 name and address of the establishment that printed or otherwise created the

1 campaign materials; provided, that the name and address of the printing  
2 establishment is not required to be specified in a newspaper advertisement.  
3 Each candidate and each chairperson of each Measure Finance Committee  
4 shall also ensure that a copy of each campaign material used in the campaign  
5 is filed with the City Clerk’s Office on or prior to the day the financial report  
6 disclosing the expenditure for said campaign material is due.

7

8 **Section 9. RULES AND REGULATIONS, ASSISTANCE; CAMPAIGN AND**  
9 **ELECTION AUDITOR.**

10 (b) There is hereby created the position of Campaign and Election  
11 Auditor. The Auditor shall be a Certified Public Accountant, a Registered  
12 Public Accountant, or have other qualified campaign finance experience.

13

14 **Section 10. ENFORCEMENT.**

15 (b) Notwithstanding any other provision in this section, the Board and/or  
16 the City Clerk may, on their own initiative, initiate a charge or charges that a  
17 candidate or the chairperson of a Measure Finance Committee or any other  
18 group has committed a violation of this Election Code or of the Rules and  
19 Regulations promulgated by the Board or the City Clerk. In the event that  
20 inspection and/or audit of the candidates or Measure Finance Committees  
21 campaign financial records made pursuant to Section 4(j)3 results in a charge  
22 or charges against a candidate or Measure Finance Committee, written notice  
23 to the candidate or chairperson of the charge or charges shall not be required  
24 before the Board takes further action.

25 (c) Should the Board find, after due hearing, that a violation of this  
26 Election Code or the Rules and Regulations of the Board has occurred, it may,  
27 for each violation, issue a public reprimand or impose a fine not to exceed the  
28 maximum amount authorized by state law, or do both.

29 (d) **Automatic Fines.** Notwithstanding subsection (d) of this section, a  
30 failure to file or late filing shall subject the candidate or the chairperson of the  
31 Measure Finance Committee or any other obligated person, whichever may be  
32 the case, to an automatic fine and public reprimand according to the  
33 schedules established in the Rules and Regulations of the Board. In situations

1 where there is an incomplete filing the candidate or the chairperson of the  
2 Measure Finance Committee shall be notified of the failure and shall have ten  
3 days from the date of notice to correct the failure. If the incomplete filing is not  
4 corrected within ten days there shall be an automatic fine and public  
5 reprimand. If the failure is corrected within ten days and the Board determines  
6 from the face of the filings that any failure appears to have been inadvertent  
7 and made in good faith, the Board shall find that there has been no violation.

8 (e) In addition to imposing such sanctions, or as an alternative thereto,  
9 and if the violator be a successful candidate in the election, the Board may  
10 recommend to the Council that the violator be removed from office.

11 (f) The Council may, upon the recommendation of the Board, and after  
12 due hearing of the charge, order the suspension or removal of an elected  
13 official; provided, however, that no official shall be removed or suspended  
14 except upon the concurrence of two-thirds of the Councilors qualified to vote  
15 thereon.

16 (g) An appeal may be taken from any findings and action of the Board  
17 pursuant to subsections (d) and (e) of this section and from any order of the  
18 Council pursuant to subsection (g) of this Section to the District Court of the  
19 Second Judicial District, by filing Notice of Appeal in the said District Court  
20 within five days of the date of the action or order appealed from, and by filing  
21 with said District Court within thirty days a true transcript and record of the  
22 proceedings upon which said action or order is based. The hearing in District  
23 Court shall be held on said transcript and record only, and new testimony  
24 shall not be taken.

25 (h) All fines not timely paid shall be assessed interest at the maximum  
26 rate allowed by state law commencing on the thirty-first day following the date  
27 that the fine was imposed.

28 (i) Any fines collected under this section shall be placed into the City's  
29 General Fund.

30 (j) Any candidate who fails or refuses to file a report of expenditures  
31 and contributions or statement of no activity or to pay a penalty imposed by  
32 the City Clerk as required by Section 4 of Article XIII shall not, in addition to  
33 any other penalties provided by law:

1           (1) have the candidate's name printed upon the ballot if the  
2 violation occurs before and through the final date for the withdrawal of  
3 candidates; or

4           (2) be issued a certificate of nomination or election, if the  
5 violation occurs after the final date for withdrawal of candidates or after the  
6 election, until the candidate satisfies all reporting requirements of Article XIII,  
7 Section 4, and pays all penalties owed.

8           (k) Any candidate who loses an election and who failed or refused to file  
9 a report of expenditures and contributions or a statement of no activity or to  
10 pay a penalty imposed by the City Clerk or Board of Ethics for a violation of  
11 the Code of Ethics, the Election Code, the Open and Ethical Elections Code, or  
12 Rules and Regulations promulgated by the City Clerk or the Board of Ethics,  
13 shall not be, in addition to any other penalties provided by law, permitted to  
14 file a declaration of candidacy or nominating petition for any future election  
15 until the candidate satisfies all reporting requirements and pays all penalties  
16 owed.

17

18 SECTION 3. Article XVI, Sections 6 is amended as follows, with the  
19 subsequent sections to be renumbered accordingly. Article XVI, Section 16,  
20 "MATCHING FUNDS – OPPOSING FUNDS" is deleted in its entirety, with the  
21 subsequent sections to be renumbered accordingly.

22 CITY CHARTER, ARTICLE XVI. OPEN AND ETHICAL ELECTIONS CODE  
23 Section 6. SEED MONEY-IN-KIND CONTRIBUTIONS.

24           (A) An Applicant Candidate may accept Seed Money not to exceed \$250.00  
25 per Person.

26

27 SECTION 4. Chapter 2, Article 3, Section 8 is amended as follows:

28 ARTICLE 3: LOBBYIST REGISTRATION

29 § 2-3-8 LOBBYING CAMPAIGN DISCLOSURE, BANK ACCOUNT AND  
30 EXPENDITURE REQUIREMENTS AND RETENTION OF RECORDS.

31           (B) Disclosure of Lobbyist Campaigning Activities.

32           (2) The disclosure required in this statement shall be filed  
33 quarterly, and as a component of the quarterly activity reports required in § 2-

1 3-4. In the event that no expenditures have been made and no contributions  
2 have been received, the lobbyist or lobbyist organization shall submit the  
3 quarterly registration and affirm a statement of no activity.

4

5 SECTION 5. Chapter 2, Article 4, Section 13 is amended as follows:

6 CHAPTER 2: GOVERNMENT

7 ARTICLE 4: MUNICIPAL ELECTIONS; PETITIONS

8 § 2-4-13 FILING OF PETITIONS.

9 (H) All Candidates who submitted a petition in accordance with Section  
10 4, Article II of the City Charter shall file the results of the City Clerk's petition  
11 signature verification and their Declaration of Candidacy with the proper filing  
12 officer on the prescribed filing day in accordance with Section 1-22-3.2(D)  
13 NMSA 1978 or Section 1-22-7 NMSA 1978.

14

15 SECTION 6. SEVERABILITY CLAUSE. If any section, paragraph, word or  
16 phrase of this ordinance is for any reason held to be invalid, or unenforceable  
17 by any court of competent jurisdiction, such decision shall not affect the  
18 validity of the remaining provisions of this ordinance. The Council hereby  
19 declares that it would have passed this ordinance and each section,  
20 paragraph, sentence, clause, word or phrase thereof irrespective of any  
21 provision being declared unconstitutional or otherwise invalid.

22 SECTION 7. COMPILATION. Sections 1, 2, and 3 of this ordinance shall amend,  
23 be incorporated in, and made part of the City Charter and Sections 4 and 5  
24 shall amend, be incorporated in, and made part of the Revised Ordinances of  
25 Albuquerque, New Mexico, 1994.

26 SECTION 8. EFFECTIVE DATE. This ordinance shall take effect five (5) days  
27 after publication by title and general summary.

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1 PASSED AND ADOPTED THIS 15<sup>th</sup> DAY OF June, 2020  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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Patrick Davis, President  
City Council


APPROVED THIS 26 DAY OF June, 2020

Bill No. F/S O-20-13



Timothy M. Keller, Mayor  
City of Albuquerque

ATTEST:



Ethan Watson, City Clerk