# CITY of ALBUQUERQUE TWENTY FOURTH COUNCIL

COUNCIL BILL NO. <u>0-20-13</u> ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Diane G. Gibson, by request

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#### ORDINANCE

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 XVI, SECTIONS 6 AND 16 OF THE CITY CHARTER; CHAPTER 2, ARTICLE 3, 4 5 SECTION 8, ROA 1994; AND CHAPTER 2, ARTICLE 4, SECTION 13 ROA 1994 TO: MODIFY THE FREQUENCY THE BOARD OF ETHICS MUST MEET: 6 ELIMINATE THE BOARD OF ETHICS REQUIRED REPORT SUBMITTED TO THE 7 MAYOR AND CITY COUNCIL AND THE NEED FOR THE BOARD TO CONTRACT 8 9 WITH OUTSIDE COUNSEL TO WRITE ADVISORY OPINIONS: GRANT THE BOARD OF ETHICS CHAIRMAN AUTHORITY TO AVOID DISMISSAL OF AN 10 UNRESOLVED COMPLAINT UPON A SHOWING OF GOOD CAUSE; REMOVE 11 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 ELECTION AUDITOR; UPDATE THE ENFORCEMENT PROVISIONS TO 16 17 REMOVE DUPLICATION WITH THE RULES OF THE BOARD OF ETHICS AND TO CLARIFY THAT A CANDIDATE IS SUBJECT TO THE ENFORCEMENT 18 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 COUNSILLOR CANDIDATES TO SUBMIT QUALIFYING PETITIONS TO THE CITY TO ACCOUNT FOR CHANGES IN STATE LAW. 25

WHEREAS, in 2001 the City of Albuquerque adopted the Lobbyist and
 Lobbyist Organization Registration and Disclosure Ordinance; and

WHEREAS, the Lobbyist and Lobbyist Organization Registration and
Disclosure Ordinance was last amended in 2019; and

5 WHEREAS, the City seeks to encourage transparency and accountability in6 government; and

7 WHEREAS, the City intends to unify and simplify its processes whenever8 practicable.

9 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF 10 ALBUQUERQUE:

11 SECTION 1. Article XII, Section 3 is amended as follows:

12 CITY CHARTER, ART. XII, CODE OF ETHICS

13 Section 3. BOARD OF ETHICS AND CAMPAIGN PRACTICES.

14 (f) The Board shall:

15 (1) meet as necessary[<del>, at least once in each calendar quarter to</del>
16 carry out its duties];

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 has21 been a breach as alleged in a complaint;

(4) contract for professional services[<u>through the City Clerk</u>] as necessary to carry out duties;

24 [(5) provide the Mayor and City Council with an annual report 25 stating the number of complaints that were submitted to the City Clerk alleging a violation of the Code of Ethics, the Election Code, the Open and Ethical Elections Code, and/or rules promulgated by the Board and/or the City 28 Clerk, the number of complaints submitted to the Board by the City Clerk, and 29 a summary of the status of each complaint to include the date of the 30 complaint, the date for the case to be heard, and date for possible final action. 31 The annual report shall be submitted to Council in July of each year, and shall 32 also include any recommendations regarding amendments to city ethics or 33 public accountability laws, and recommendations regarding the scope of the Board and/or City Clerk's powers and duties. The annual status reports must
 be approved by the Board and made available to the public on the City Clerk's
 website. Status reports may be provided to Mayor and City Councilors and
 their staff on an informal basis as appropriate.]

5 ...

6 (h) The Board may issue to candidates, officials, and lobbyists advisory 7 opinions concerning the Code of Ethics, the Election Code, the Open and 8 Ethical Elections Code, and rules promulgated by the Board and/or the City 9 Clerk. Candidates and officials shall make all requests for advisory opinions in 10 writing to the City Clerk.[ The City Clerk shall maintain a contract with outside, 11 independent legal counsel to draft the advisory opinion, which shall be 12 submitted to the Board of Ethics for consideration of approval within fourteen 13 (14) days of a written request for advisory opinion being received by the City 14 Clerk. Within thirty (30) days of receiving the proposed advisory opinion, the 15 Board shall vote to adopt or decline to adopt the proposed advisory opinion 16 as written. If the Board of Ethics declines the proposed advisory opinion, the 17 Board of Ethics will either direct the City Clerk to amend the proposed opinion as appropriate or to draft a new advisory opinion for consideration for adoption at its next meeting, which shall be held within fourteen (14) days. Official advisory opinions will be issued only upon the Board's approval. All timeframes noted in this subsection are mandatory unless the City Clerk or the Board notifies the requester in writing of a delay in issuance and with specificity as to that request, the reason for the delay, and continues to notify the requester in writing every thirty (30) days until the advisory opinion is issued, which in all cases shall be within one hundred eighty (180) days of the reauest.1

[A request for an][An] advisory opinion[<u>and the opinion approved by the</u> Board] shall become public records at the time the Board votes on such opinion. Advisory opinions shall only concern prospective matters. Specifically, no advisory opinion shall be issued with respect to an event that has already occurred. Advisory opinions shall only be issued with respect to conduct in which the requestor of the opinion intends to engage. No advisory opinion shall be given unless approved by four members of the Board.

Approved opinions shall be kept as permanent records by the City Clerk. The Board may promulgate rules and regulations establishing procedures for issuing advisory opinions and limitations on the use of advisory opinions as a defense to violations of the Code of Ethics or the Election Code. The Board may issue consent orders and may promulgate rules and regulations establishing procedures of issuance of consent orders.

7

(i)

Limitations on Complaints.

8 (3) All complaints referred to the Board by the City Clerk at any 9 time prior to sixty (60) days before election day shall be resolved, determined, 10 or dismissed by the Board within sixty (60) days from the referral of the 11 complaint. If the complaint is not resolved within sixty (60) days, the complaint 12 shall be dismissed, unless delayed [by order of the Board][the Chairman of the 13 Board] upon a showing of good cause.

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

SECTION 2. Article XIII, Sections 4, 5, 9, and 10 are amended as follows: CITY CHARTER, ART. XIII, ELECTION CODE

Section 4. CAMPAIGN FINANCING.

(i) Campaign Finance Records.

24 [3. During the period between noon on the Friday immediately 25 preceding the election and the day of the election, each candidate or the 26 candidate's treasurer, and the chairperson or treasurer of each Measure 27 Finance Committee, shall appear before the Board at a time and place 28 designated by the Board. The appearance of the candidate's treasurer or the 29 Committee's treasurer before the Board on the candidate's or Committee's 30 behalf does not relieve the candidate or the Committee's chairperson of the 31 ultimate and complete responsibility for the accuracy of all reports filed and the control of the candidate's or Committee's campaign. At the designated 32 33 time and place, the campaign financial records of each candidate and each 1 Measure Finance Committee required pursuant to Section 4 of this Election 2 Code shall be submitted to the Board for inspection and audit, or both. Each 3 candidate and the chairperson of each Measure Finance Committee shall be 4 given at least three days written notice of the designated time and place.]

5

6 Section 5. CAMPAIGN MATERIALS.

7 Each candidate and each chairperson of each Measure Finance Committee 8 shall ensure that all campaign materials specify the name of the 9 [sponsor][campaign or committee] who authorized the printing or distribution 10 of such material and the name and address of the establishment that printed 11 or otherwise created the campaign materials; provided, that the name and 12 address of the printing establishment is not required to be specified in a 13 newspaper advertisement. Each candidate and each chairperson of each 14 Measure Finance Committee shall also ensure that a copy of each campaign 15 material used in the campaign is [promptly]filed with the [Board][City Clerk's 16 Office] [upon such material being printed or distributed][on or prior to the day 17 the financial report disclosing the expenditure for said campaign material is 18 due].

20 RULES AND REGULATIONS, ASSISTANCE: CAMPAIGN AND Section 9. 21 ELECTION AUDITOR.

22 There is hereby created the position of Campaign and Election (b) 23 Auditor. The Auditor shall be [either\_]a Certified Public Accountant[-or][,] a 24 Registered Public Accountant[, or have other gualified campaign finance 25 experience] and shall:

27 Section 10. ENFORCEMENT.

28 (b) Upon referral of any complaint by the Board, the Campaign and 29 Election Auditor shall investigate the charge or charges and report to the 30 Board.]

31 Notwithstanding any other provision in this section, the Board ([c][b]) 32 and/or the City Clerk may, on their own initiative, initiate a charge or charges 33 that a candidate or the chairperson of a Measure Finance Committee or any 1 other group has committed a violation of this Election Code or of the Rules 2 and Regulations promulgated by the Board or the City Clerk. In the event that 3 inspection and/or audit of the candidates or Measure Finance Committees 4 campaign financial records made pursuant to Section 4(j)3 results in a charge 5 or charges against a candidate or Measure Finance Committee, written notice 6 to the candidate or chairperson of the charge or charges shall not be required 7 before the Board takes further action.

8 ([d][c]) Should the Board find, after due hearing, that a violation of 9 this Election Code or the Rules and Regulations of the Board has occurred, it 10 may, for each violation, issue a public reprimand or impose a fine not to 11 exceed the maximum amount authorized by state law, or do both.

12 ([e][d]) Automatic Fines. Notwithstanding subsection (d) of this 13 section, a failure to file or late filing shall subject the candidate or the 14 chairperson of the Measure Finance Committee or any other obligated person, 15 whichever may be the case, to an automatic fine and public reprimand 16 according to the schedules established in the Rules and Regulations of the 17 Board. In situations where there is an incomplete filing the candidate or the 18 chairperson of the Measure Finance Committee shall be notified of the failure 19 and shall have ten days from the date of notice to correct the failure. If the 20 incomplete filing is not corrected within ten days there shall be an automatic 21 fine and public reprimand. If the failure is corrected within ten days and the 22 Board determines from the face of the filings that any failure appears to have 23 been inadvertent and made in good faith, the Board shall find that there has 24 been no violation.

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

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

1 An appeal may be taken from any findings and action of the ([h][g]) Board pursuant to subsections (d) and (e) of this section and from any order 2 of the Council pursuant to subsection (g) of this Section to the District Court 3 4 of the Second Judicial District, by filing Notice of Appeal in the said District Court within five days of the date of the action or order appealed from, and by 5 6 filing with said District Court within thirty days a true transcript and record of 7 the proceedings upon which said action or order is based. The hearing in 8 District Court shall be held on said transcript and record only, and new 9 testimony shall not be taken.

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

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

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

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

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

([I][k]) Any candidate who loses an election and who failed or refused to file
a report of expenditures and contributions or a statement of no activity or to
pay a penalty imposed by the City Clerk or Board of Ethics for a violation of
the Code of Ethics, the Election Code, the Open and Ethical Elections Code, or
Rules and Regulations promulgated by the City Clerk or the Board of Ethics,
shall not be, in addition to any other penalties provided by law, permitted to
file a declaration of candidacy or nominating petition for any future election

until the candidate satisfies all reporting requirements and pays all penalties
 owed.

3 SECTION 3. Article XVI, Sections 6 and 16 are amended as follows, with the
4 subsequent sections to be renumbered accordingly:

5 CITY CHARTER, ARTICLE XVI. OPEN AND ETHICAL ELECTIONS CODE

6 Section 6. SEED MONEY-IN-KIND CONTRIBUTIONS.

7 (A) An Applicant Candidate may accept Seed Money[<u>during the</u>
 8 Exploratory Period and Qualifying Period] not to exceed \$250.00 per Person.

9

10 [Section 16. MATCHING FUNDS - OPPOSING FUNDS.

11 -During the course of a regular municipal election or a run-off election, when 12 a Participating Candidate's Opposing Funds in aggregate amount are greater 13 than the funds distributed plus any Seed Money spent to a Participating 14 Candidate in the same race, then the Participating Candidate is entitled to receive matching funds in the amount that the Opposing Funds exceed the 15 16 distribution from the Fund plus any Seed Money spent. Total Opposing Funds 17 to a Participating Candidate in an election are limited to twice the amount originally distributed to that Candidate pursuant to Section 12 of the Open and Ethical Elections Code. If the allocation of Opposing Funds is greater than the total amount available for distribution, then the amounts distributed to a Participating Candidate shall be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available.]

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

**ARTICLE 3: LOBBYIST REGISTRATION** 

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

(B) Disclosure of Lobbyist Campaigning Activities.

(2) [The statements required by this section shall be filed as
follows: the first statement shall be filed within five (5) City working days after
the registration with the City Clerk that designates the official action the
lobbyist or lobbying organization supports or opposes. The first statement
shall show all contributions received and all expenditures made at any time in

1 the past up to 5:00 p.m. of the day immediately prior to the date of filing. The 2 first statement shall include all expenditures made and contributions received 3 prior to registering with the City Clerk as well as such expenditures made and 4 contributions received after the registration required under § 2-3-4 of this 5 Ordinance. Additional statements shall be filed with the City Clerk every 6 twenty-eight (28) calendar days from the date of the original registration until 7 the lobbyist or lobbying organization provides a final statement. In the event 8 no expenditures have been made and no contributions have been received 9 during any of the required reporting periods, the lobbyist or lobbyist 10 organization shall not be required to file a statement for that time period but 11 shall be required to submit a letter to the City Clerk stating that no 12 contribution and expenditure activity occurred during the reporting period. 13 The final disclosure statement shall include or be accompanied by a sworn 14 statement that all lobbying campaigning has ceased on or before the date of 15 such statement as to the official action designated in the registration. The final 16 statement shall show all expenditures and contributions and may be filed at 17 any time.][The disclosure required in this statement shall be filed quarterly, 18 and as a component of the guarterly activity reports required in § 2-3-4. In the 19 event that no expenditures have been made and no contributions have been 20 received, the lobbyist or lobbyist organization shall submit the quarterly 21 registration and affirm a statement of no activity.]

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

23 CHAPTER 2: GOVERNMENT

24 ARTICLE 4: MUNICIPAL ELECTIONS; PETITIONS

25 § 2-4-13 FILING OF PETITIONS.

(F) [Applicant-]Candidates [seeking public financing who are submitting
petitions][who submitted a petition] in accordance with Section 4, Article II of
the City Charter shall file their Declaration of Candidacy and [verified
petitions][the results of the City Clerk's petition signature verification] with the
County Clerk [14 days after the last day of the Qualifying Period][between 9:00
a.m. and 5:00 p.m. on the seventieth day before the election].

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

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

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

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# CITY OF ALBUQUERQUE Albuquerque, New Mexico Office of the Mayor

## **INTER-OFFICE MEMORANDUM** 3/18/20

- TO: Pat Davis, President, City Council
- FROM: Timothy M. Keller, Mayor
- SUBJECT: AMENDING ARTICLE XII, SECTION XIII, SECTION 1 OF THE CITY CHARTER; ARTICLE XIII, SECTIONS 4, 5, 9, AND 10 OF THE CITY CHARTER; ARTICLE XVI, SECTIONS 6 AND 16 OF THE CITY CHARTER; CHAPTER 2, ARTICLE 3, SECTION 8, ROA 1994; AND CHAPTER 2, ARTICLE 4, SECTION 13 ROA 1994.

The City of Albuquerque City Clerk's office recommends updates to the Code of Ethics, the Election Code, the Open and Ethical Election Code, and the City Charter regarding Lobbyist Registration and Municipal Elections.

The proposed updates will modify the frequency the board of ethics must meet; eliminate the board of ethics required report submitted to the mayor and city council and the need for the board to contract with outside counsel to write advisory opinions; grant the board of ethics chairman authority to avoid dismissal of an unresolved complaint upon a showing of good cause; Remove the mandatory meeting between candidates and the board of ethics and campaign practices on the Friday before an election; update when and with whom campaign material is to be filed; changing the requirements for the campaign and election auditor; update the enforcement provisions to remove duplication with the rules of the board of ethics and to clarify that a candidate is subject to the enforcement provisions for failure to pay a penalty to the city clerk; clarifying when applicant candidates can accept seed money; removing the matching funds provision of the city charter; aligning lobbyist disclosures with their required quarterly activity reports; adjusting deadline for Mayoral and Councilor candidates to submit qualifying petitions to the city to account for changes in state law.

Mayor Timothy M. Keller

AMENDING ARTICLE XII, SECTION XIII, SECTION 1 OF THE CITY CHARTER; ARTICLE XIII, SECTIONS 4, 5, 9, AND 10 OF THE CITY CHARTER; ARTICLE XVI, SECTIONS 6 AND 16 OF THE CITY CHARTER; CHAPTER 2, ARTICLE 3, SECTION 8, ROA 1994; AND CHAPTER 2, ARTICLE 4, SECTION 13 ROA 1994

Approved:

-DS EAJ

17/20

Sarita Mair Da Chief Administrative Officer

Approved as to Legal I	Form:	
DocuSigned by:		Ds
Esteban A. Aguitar, Jr. 7961D99D046F4DB	4/12/2020	(kM
Esteban A. Aguilar, Jr. City Attorney	Date	

Recommended:

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4/9/2020

<u>49D7E50AAABD429...</u> Ethan Watson City Clerk

Ethan Watson

Date

### **Cover Analysis**

### 1. What is it?

The purpose of this bill is to clean-up the language and regulations in the Code and Charter that affect local elections.

### 2. What will this piece of legislation do?

This legislation will:

- Amend the Code of Ethics to require the Board of Ethics to only meet as necessary, remove the requirement of providing the Mayor and City Council an annual report, remove the requirement that the Board maintain a contract with outside independent legal council to draft advisory opinions, and allow the Chairman of the Board to extend a complaint upon showing of good cause.
- Amend the Election Code to remove the requirement that candidates and committees meet with the Board of Ethics and Campaign Auditor the Friday preceding the election, clarifies the requirement regarding what campaign materials to be submitted to the City Clerk, allows for a person with campaign finance experience to qualify as the Campaign and Election Auditor, and fixes language in the penalty section to clarify penalty imposed by the City Clerk.
- Amends the Open and Ethical Election Code to clarify the timing Seed Money can be accepted, and removes the Matching Funds sections.
- Amends the Lobbyist Registration Ordinance in order that disclosure of lobbyist campaigning activities can be reported on the quarterly report form rather than every 28 days.
- Amends Chapter 2, Article 4, Municipal Elections; Petitions, to require candidates in a local election submit the City Clerk's petition signature verification to the County Clerk along with their Declaration of Candidacy.

#### 3. Why is this legislation needed?

This legislation is necessary in advance of the 2021 election cycle to properly conduct a fair and transparent election.