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1 D. The Albuquerque Tax Preparer and Consumer Rights Ordinance is enacted  
2 pursuant to the general welfare and police powers of the City of  
3 Albuquerque.

4 § 13-20-1-2 SHORT TITLE.

5 This Part shall be referred to as the “Albuquerque Tax Preparer and  
6 Consumer Rights Ordinance” and will sometimes be referred to herein as “this  
7 Part.”

8 § 13-20-1-3 DEFINITIONS.

9 For purposes of the Albuquerque Tax Preparer and Consumer Rights  
10 Ordinance, the following terms shall have the stated meaning, unless the  
11 context clearly requires a different meaning:

12 ASSISTED DIRECT DEPOSIT. A mechanism or agreement through which:

13 A. A consumer’s individual tax refund(s) is deposited in a financial account  
14 other than the consumer’s bank account;

15 B. Charges related to the underlying income tax return, including tax  
16 preparation and/or refund settlement charges are deducted from the  
17 deposit; and

18 C. The remaining portion of the refund is deposited in the consumer’s bank  
19 account.

20 CONSUMER. A natural person who, singly or jointly with another  
21 consumer, files a federal or state personal income tax return.

22 LICENSEE. A tax preparer who is licensed by the Mayor or the Mayor’s  
23 designee under this Part.

24 REFUND. A federal or state personal income tax refund.

25 REFUND ANTICIPATION CHECK. A check, debit card, or other payment  
26 mechanism that is issued to a consumer based on the anticipated amount of  
27 their federal or state personal income tax refund and prior to the actual  
28 issuance of the refund by the federal or state government.

29 REFUND ANTICIPATION LOAN. A loan that is secured by a creditor or that  
30 a creditor arranges or expects to be repaid, directly or indirectly, from the  
31 proceeds of the consumer’s federal or state personal income tax refund(s) or  
32 tax credits, including any sale, assignment, or purchase of a tax refund or tax  
33 credit at a discount or for a fee.

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1       **REFUND SETTLEMENT PRODUCT.** Any assisted direct deposit, refund  
2 anticipation check, refund anticipation loan, or other similar mechanism,  
3 agreement, or transaction through which a consumer receives money, in an  
4 amount based on their anticipated personal income tax refund, from a person  
5 other than the federal or a state government.

6       **RETURN.** A federal or state person income tax return.

7       **TAX PREPARATION SERVICES.** Preparation, advice, or assistance in the  
8 preparation of, or assumption of final responsibility for another person’s  
9 preparation of, a federal or state personal income tax return of a consumer for  
10 compensation or valuable consideration. This shall include any tax  
11 preparation services provided in conjunction with a refund anticipation loan,  
12 refund anticipation check, or refund settlement product.

13       **TAX PREPARER.** A person who prepares for compensation, or who  
14 employs one or more persons to prepare for compensation, a personal income  
15 tax return or any claim for tax refund or who holds themselves out as  
16 providing personal income tax preparation services. A tax preparer shall not  
17 include:

- 18       **A.** A licensed attorney-at-law, in good standing in this state or any other state,  
19       who provides tax preparation services and any employee of such attorney-  
20       at-law;
- 21       **B.** A certified public accountant who provides tax preparation services and  
22       any employees of such certified public accountant;
- 23       **C.** An employee of or volunteer for of a Volunteer Tax Assistance program;
- 24       **D.** An officer or employee of a federal, state, or local governmental agency  
25       who provides tax preparation services in the scope of their employment; or
- 26       **E.** A duly appointed administrator, conservator, guardian, personal  
27       representative, trustee, or receiver who provides tax preparation services  
28       in the normal course of their prescribed duties.

29       **WRITING.** Information legibly recorded in paper or electronic form.

30       **§ 13-20-1-4 MANDATORY DISCLOSURES.**

31       Prior to providing any individual tax preparation services, a tax preparer  
32 must provide the consumer with the following:

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- 1 A. A copy of the “Albuquerque Consumer Bill of Rights for Paid Personal  
2 Income Tax Preparation Services” that the City shall make available online  
3 for the tax preparer to print and provide to the consumer.
- 4 B. Tax Preparer Disclosure. A separate written “Tax Preparer Disclosure”  
5 consisting of:
- 6 1. The licensed tax preparer’s name, address, telephone number and PTIN  
7 from the Internal Revenue Services (IRS);
  - 8 2. A statement that the licensed preparer is not a certified public  
9 accountant, tax attorney, or enrolled agent with the IRS;
  - 10 3. A written summary of the tax preparer’s qualifications, including:
    - 11 a. Education degrees attained;
    - 12 b. Years of education directly related to tax preparation service; and
    - 13 c. Years of experience in tax preparation service.
  - 14 4. A statement that the tax preparer is licensed and bonded as required by  
15 the City;
  - 16 5. A statement informing consumers that they may be able to file their  
17 federal taxes for free via the IRS website or may qualify for free tax  
18 preparation assistance from nonprofit organizations;
  - 19 6. A statement that, prior to entering into any written agreement or  
20 contract, the tax preparer shall provide the consumer with a written  
21 estimate of the total charges based upon the tax preparation services  
22 selected by the consumer; and
  - 23 7. The tax preparer’s New Mexico Combined Reporting System (CRS)  
24 Identification Number.
- 25 C. Fee Schedule Disclosure. A separate written disclosure of fees, entitled  
26 “Fee Disclosure”, for individual tax preparation services that contains the  
27 following information:
- 28 1. A list of, description of, and the fee for each tax preparation service  
29 offered by the tax preparer, including the fees for preparation of  
30 individual forms; and
  - 31 2. A list of, description of, and price of all miscellaneous fees associated  
32 with the licensee’s tax preparation services, including any processing,  
33 billing, filing or other fees.

- 1           3. A statement that the “Fee Disclosure” does not include any costs  
2           associated with a refund anticipation loan, refund anticipation check or  
3           refund anticipation product.
- 4   **D. Written Estimate of Fees.**
- 5           1. Prior to the consumer entering into any written agreement or contract  
6           or paying any amount, the tax preparer shall provide the consumer with  
7           a written estimate of the total charges based upon the tax preparation  
8           services selected by the consumer;
- 9           2. If an estimate of an anticipated tax refund is prepared in conjunction  
10          with a refund anticipation loan, refund anticipation check or refund  
11          anticipation product, the tax preparer shall provide the consumer with:
- 12               a. A written estimate of the total charges based upon the tax  
13               preparation services anticipated;
- 14               b. The amount of any tax refund anticipated from the federal and any  
15               state government; and
- 16               c. A written estimate of the dollar amount and percentage of the  
17               consumer’s total anticipated tax refund to be paid to the  
18               consumer once all fees of the tax preparer, including any affiliate  
19               of the tax preparer, are deducted.
- 20   **E. Final Accounting.** Upon the conclusion of services, the tax preparer shall  
21   provide:
- 22           1. A final itemized accounting of all services provided and the fees  
23           charged for those services and, if included, any refund settlement  
24           products, selected by the consumer, including any fees and costs; and,
- 25           2. A written explanation of any fees or costs charged in excess of the  
26           estimated charges previously disclosed;
- 27           3. A written statement setting forth the dollar amount and percentage of  
28           the consumer’s total refund that is to be paid to the tax preparer and  
29           any affiliate of the tax preparer; and
- 30           4. A written statement setting forth the address and phone number where  
31           the consumer can contact the tax preparer throughout the year.
- 32   **F.** A tax preparer shall not enter into any written agreement or contract with  
33   the consumer until:

- 1 1. The tax preparer has verbally reviewed with the consumer each and
- 2 every disclosure contained in the “Tax Preparer Disclosure” and “Fee
- 3 Disclosure” forms; and
- 4 2. The consumer has certified that such review occurred by signing and
- 5 dating each form.
- 6 G. The tax preparer must offer the consumer the choice between English and
- 7 Spanish versions of the “Tax Preparer Disclosure” and “Fee Disclosure”
- 8 forms and must review the disclosures in the selected language. If the
- 9 consumer does not understand English or Spanish, the tax preparer must
- 10 allow the consumer an opportunity to secure the services of a translator
- 11 prior to continuing with the tax preparation services.
- 12 H. The City may prescribe model “Tax Preparer Disclosure” and “Fee
- 13 Disclosure” forms to facilitate compliance with the disclosure requirements
- 14 of this Part. A tax preparer shall be deemed in compliance with the
- 15 disclosure requirements of this Part if a tax preparer uses such model
- 16 form. Nothing in this Part shall be construed as requiring tax preparers to
- 17 use any such model form.
- 18 I. A tax preparer shall provide all disclosures required by this Part, whether
- 19 in writing or electronically, and must do so in a manner that is reasonably
- 20 expected to provide actual notice and in a form that the consumer may
- 21 retain and access in its entirety.
- 22 **§ 13-20-1-5 TAX PREPARER OBLIGATIONS AND CONSUMER RIGHTS.**
- 23 A tax preparer shall comply with the following obligations and consumer
- 24 rights:
- 25 A. The tax preparer shall provide the consumer with the opportunity to review
- 26 the final draft tax return before filing with the federal or state government;
- 27 B. The tax preparer shall provide the consumer with a copy of the final tax
- 28 return at the time that such return is filed or given to the consumer to file
- 29 with the federal or state government. The copy of the return shall be
- 30 provided for no fee;
- 31 C. The tax preparer shall return to the consumer all personal papers and a
- 32 copy of any permanent schedules prepared. These documents shall be
- 33 provided to the consumer within five (5) days of filing of the final tax return

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- 1 or when the final tax return is provided to the consumer for filing with the  
2 federal or state government;
- 3 D. A consumer has the right to have any tax refund deposited directly into  
4 their own bank account or, at their request, to have the refund sent to them  
5 via check;
- 6 E. The tax preparer shall not require any consumer to purchase a refund  
7 settlement product or any other good or service in order to receive tax  
8 preparation services from the tax preparer;
- 9 F. The tax preparer who, individually or in conjunction with others, makes or  
10 offers refund anticipation loans, is required to comply with NMSA 1978, §§  
11 58-15-1 *et seq.* and all disclosure and other requirements of this Part;
- 12 G. A consumer has the right to file a complaint with the City regarding a tax  
13 preparer and the right to seek redress by filing a claim with the City Clerk  
14 against the Tax Preparer’s Bond; and
- 15 H. The tax preparer shall inform the consumer that they may be able to file  
16 their federal taxes for free via the IRS website or may qualify for free tax  
17 preparation assistance from nonprofit organizations.

18 **§ 13-20-1-6 WRITTEN AGREEMENT.**

19 No consumer shall be liable to a tax preparer for any charge, fee, or cost  
20 for personal income tax preparation services without a written agreement or  
21 contract for such services.

22 **§ 13-20-1-7 ALBUQUERQUE CONSUMER BILL OF RIGHTS FOR PAID  
23 PERSONAL INCOME TAX PREPARATION SERVICES.**

24 The City shall produce a document in English and Spanish, entitled  
25 “ALBUQUERQUE CONSUMER BILL OF RIGHTS FOR PAID PERSONAL  
26 INCOME TAX PREPARATION SERVICES.” The document shall be published  
27 prominently on the City’s website and shall contain a summary of the required  
28 disclosures, tax preparer obligations and consumer rights enumerated in this  
29 Part.

30 **§ 13-20-1-8 MANDATORY POSTING.**

31 A tax preparer shall post the following information, in a form and format  
32 prescribed by the City, in both English and Spanish, at any premises where  
33 the tax preparer renders any personal tax preparation services and on any

1 website of the tax preparer. All signs displaying such information must be  
2 prominently and conspicuously posted at the primary public entrance to the  
3 business premises or in the immediate area where consumers arrive and are  
4 met by tax preparers and on any website of the tax preparer:

- 5 A. The Albuquerque Consumer Bill of Rights for Paid Personal Income Tax  
6 Preparation Services.
- 7 B. A written list, description, and price of all tax preparation services offered  
8 by the tax preparer.
- 9 C. A written list, description, and price of all miscellaneous fees associated  
10 with the tax preparer’s personal tax preparation services, including, but not  
11 limited to, filing, billing, and processing fees.
- 12 D. In addition to state and federal disclosure requirements related to refund  
13 anticipation loans, a written description and price of any tax settlement  
14 products offered by the tax preparer or an affiliate.
- 15 E. The names of the owners of the licensee, if the licensee is a sole  
16 proprietorship or partnership. If the licensee is a corporation, the name  
17 shall be followed by the phrase “a corporation.”
- 18 F. The name under which the licensee operates.
- 19 G. The licensee’s New Mexico CRS Identification Number and PTIN.
- 20 H. The location(s), by street, number, city, county, state, and zip code where  
21 the licensee conducts business.
- 22 I. The effective date and expiration date of the license under which the tax  
23 preparer is operating.

24 **§ 13-20-1-9 PROHIBITED ACTIVITY.**

- 25 A. No tax preparer shall require, as a condition of offering or rendering tax  
26 preparation services to a consumer, that such consumer purchase or  
27 utilize a refund settlement product.
- 28 B. No tax preparer shall represent to the public, by use of a title, including  
29 “tax preparer”, by description of services, methods or procedures, or  
30 otherwise, that the individual is authorized to provide individual tax  
31 preparation service in Albuquerque unless the tax preparer is in  
32 compliance with all provisions of this Part.



- 1 C. No tax preparer shall obtain the signature of a consumer to a tax return or  
2 authorizing document which contains blank spaces said tax preparer  
3 intends to later fill-in.
- 4 D. A tax preparer shall not knowingly make a false or misleading oral or  
5 written statement, visual description or other representation of any kind  
6 knowingly made in connection with the tax preparation services offered or  
7 provided or the extension of credit which may, tends to or does deceive or  
8 mislead any consumer.
- 9 E. Each violation of this Part shall constitute a separate offense and each day  
10 of violation shall constitute a separate offense.
- 11 F. Any waiver by a consumer of any provision of this Part shall be deemed  
12 null, void and of no effect.
- 13 **§ 13-20-1-10 PRIVATE RIGHT OF ACTION.**
- 14 A. The remedies provided under this Part are cumulative of any other  
15 remedies provided by law and apply to:
- 16 1. Licensed tax preparers; and  
17 2. Unlicensed tax preparers to whom this Part applies and who operate  
18 without a license.
- 19 B. Any violation by a person required to be licensed by this Part of any state  
20 law prohibiting unfair or deceptive or unconscionable acts or practices  
21 constitutes a violation of this Part.
- 22 C. A person likely to be damaged by a violation of this Part may be granted an  
23 injunction against the tax preparer under the principles of equity and on  
24 terms that the court considers reasonable. Proof of monetary damage, loss  
25 of profits or intent to deceive or take unfair advantage of any person is not  
26 required.
- 27 D. Any person who suffers damages as a result of any violation of this Part by  
28 any tax preparer may bring an action to recover actual damages or the sum  
29 of five hundred dollars (\$500) per violation, whichever is greater.
- 30 E. The court shall award attorney fees and costs to the party complaining of a  
31 violation of this Part if the party prevails. The court shall award attorney  
32 fees and costs to the party charged with a violation if it finds that the party  
33 complaining of such practices brought an action that was groundless.

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- 1 F. Each act or omission in violation of this Part shall constitute a separate  
2 violation and each day of violation shall constitute a separate violation.
- 3 G. The remedies provided in this Part are not exclusive remedies nor must the  
4 consumer exhaust any administrative remedies provided under this Part or  
5 any other applicable law.
- 6 H. No written agreement or contract for individual tax preparation services  
7 shall contain any provision that, prior to the time a dispute arises, waives  
8 or has the effect of waiving the rights of a party to such agreement to  
9 resolve disputes by obtaining;
- 10 1. Injunctive, declaratory or other equitable relief;
- 11 2. Relief on a class-wide basis;
- 12 3. Punitive damages;
- 13 4. Damages as specified by statute;
- 14 5. Attorney's fees and costs as specified by statute or as available at  
15 common law; or
- 16 6. A hearing at which that party can present evidence in person.
- 17 I. Any provision in a written agreement or contract that violates this Part  
18 shall be void and unenforceable.
- 19 **§ 13-20-1-11 TAX PREPARER LICENSE REQUIRED.**
- 20 No person shall act as a tax preparer within the City unless they have first  
21 received a license to do so from the Mayor or the Mayor's designee.
- 22 **§ 13-20-1-12 LICENSE TERM, APPLICATION, AND FEE.**
- 23 A. Term. Each license shall be valid for a term of not less than one (1) year.
- 24 B. Application.
- 25 1. Form. Applications for a tax preparer license and renewal shall be made  
26 to the Mayor or the Mayor's designee on forms prescribed by the Mayor  
27 or the Mayor's designee.
- 28 2. Content. Applications shall contain the following information and any  
29 other additional information deemed necessary by the Mayor or the  
30 Mayor's designee, consistent with this Part:
- 31 a. The name and address of the applicant, including:
- 32 i. The address of their principal place of business;
- 33 ii. Local physical address;

- 1                   iii.    If the applicant is a corporation, the state of incorporation
- 2                                   and the name and address of each of its managing officers
- 3                                   and agents;
- 4                   iv.    If the applicant is an unincorporated association, firm, or
- 5                                   partnership, the name and address of each member of such
- 6                                   unincorporated association, firm, or partnership.
- 7           b.   Whether the applicant will prepare personal income tax returns as
- 8                   an employee and, if so, the name and address of the employer.
- 9                    i.    If the applicant will not prepare personal income tax returns
- 10                                   as an employee, their:
- 11                                   A.   New Mexico Combined Reporting System (CRS)
- 12    Identification Number or evidence of application for
- 13    such; and
- 14                                   B.   Internal Revenue Service preparer tax identification
- 15    number (PTIN) or evidence of application for such.
- 16                    ii.   If the applicant will prepare personal income tax returns as
- 17                                   an employee, their employer's:
- 18                                   A.   New Mexico CRS Identification Number or evidence of
- 19    application for such; and
- 20                                   B.   Internal Revenue Service PTIN or evidence of
- 21    application for such.
- 22           c.   Whether the applicant has been found in violation of this Part,
- 23                   has had a civil judgment entered against them for unfair or
- 24                   deceptive trade practices, or has been convicted of a felony or
- 25                   misdemeanor described in Sections 13-20-1-12(B)(2)(c)(i – ix)
- 26                   below within the past seven (7) years. If the applicant is a
- 27                   corporation, the name(s) of any officer, director, trustee, partner,
- 28                   or any current agent or employee of the applicant tax preparer
- 29                   who has been found in violation of this Part, has had a civil
- 30                   judgment entered against them for unfair or deceptive trade
- 31                   practices, or has been convicted of a felony or misdemeanor
- 32                   involving:
- 33                    i.    Theft;

- 1           ii.    **Fraud;**
- 2           iii.   **Embezzlement;**
- 3           iv.    **Identity theft;**
- 4           v.     **Money laundering;**
- 5           vi.    **Racketeering;**
- 6           vii.   **Securities fraud;**
- 7           viii.  **Tax evasion or fraud;**
- 8           ix.    **False statement or misrepresentation; or**
- 9           x.     **Forgery.**
- 10         d.    **If the applicant has been found in violation of this Part, has had a**
- 11           **civil judgment entered against them for unfair or deceptive trade**
- 12           **practices, or has been convicted of a felony or misdemeanor**
- 13           **described in Sections 13-20-1-12(B)(2)(c)(i - ix):**
- 14           i.     **The final finding, judgment, or conviction, including any**
- 15                 **amount and the nature of offense(s);**
- 16           ii.    **The state where the finding, judgment, or conviction**
- 17                 **occurred; and**
- 18           iii.   **The year of such finding, judgment, or conviction.**
- 19         e.    **Proof that the applicant has posted the bond required pursuant to**
- 20           **Section 13-20-1-16.**
- 21         f.    **A declaration, under penalty of perjury, that the information the**
- 22           **applicant has provided is complete, true, and correct.**

23 **C. Fee.**

- 24         1.    **Applications shall be accompanied by a fee to be set by the Mayor or**
- 25                 **the Mayor’s Designee, which shall be nonrefundable.**
- 26         2.    **The license fee may not be prorated.**

27 **§ 13-20-1-13 LICENSE ISSUANCE.**

28         **The Mayor or the Mayor’s designee shall examine each application for a tax**  
29         **preparer license and shall make such further investigation of the applicant and**  
30         **the applicant’s affairs as the Mayor or the Mayor’s designee shall deem**  
31         **necessary to carry out the duties under this Part. The City shall issue a license**  
32         **to the applicant unless the Mayor or the Mayor’s designee determines one or**  
33         **more of the following exist:**

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- 1 A. The applicant or any officer, director, trustee, partner, or any current agent
- 2 or employee of the applicant is in a category described under Section 13-
- 3 20-1-12(B)(2)(c) above;
- 4 B. One or more of the applicant's statements made in the application or
- 5 renewal is not true;
- 6 C. The applicant has failed to provide the information required under Section
- 7 13-20-1-12(B)(2)(a - f);
- 8 D. The applicant has not posted the bond required pursuant to Section 13-20-
- 9 1-16; or
- 10 E. The applicant has failed to pay the required fee.

11 **§ 13-20-1-14 CERTIFICATION OF COMPLIANCE.**

12 No later than January 15th of each year after which a license has been

13 issued, a licensee shall file with the City Attorney a Certification of

14 Compliance declaring, under penalty of perjury, that the licensee is in

15 compliance with each applicable provision of this Part. The Certification of

16 Compliance shall be on a form designated by the City Attorney and available

17 on the City website.

18 **§ 13-20-1-15 RENEWAL.**

19 Licenses shall be renewed annually prior the expiration of the license term.

20 Prior to the renewal of any license granted under this Part, the licensee shall

21 provide:

- 22 A. An application for renewal that includes all of the information and
- 23 requirements in Section 13-20-1-12 above;
- 24 B. Affirmative statement(s) indicating whether the licensee is updating or
- 25 changing any such information; and
- 26 C. Attach a copy of the most recently filed Certification of Compliance.

27 **§ 13-20-1-16 BOND.**

- 28 A. No applicant for a tax preparer's license or for renewal of a tax preparer's
- 29 license shall be issued a license until the Mayor or the Mayor's designee
- 30 determines that the applicant has furnished proof of responsibility
- 31 pursuant to Subsection B of this Section.
- 32 B. Proof of responsibility shall be a bond of twenty-five thousand dollars
- 33 (\$25,000.00) acceptable to the Mayor or the Mayor's designee and

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- 1 underwritten by a corporate surety authorized to transact business in New  
2 Mexico. Such bond shall meet the following conditions:
- 3 1. Payments from a bond required pursuant to this Section shall be used  
4 to cure licensure or disclosure violations by a licensee or for the benefit  
5 of any consumer damaged by violation of this Part, or any fraud,  
6 dishonesty, misstatement, misrepresentation, or any other unlawful,  
7 unfair or deceptive acts or omissions of the tax preparer;
  - 8 2. Claims against the bond shall be made within three years following filing  
9 of the tax return;
  - 10 3. The total aggregate liability of the surety for all claims shall be limited to  
11 the face amount of the bond;
  - 12 4. The bond carrier shall provide to the City and to the licensee thirty  
13 days' prior written notice of intent to cancel a bond required pursuant to  
14 this Section. The surety for such a bond shall remain liable under the  
15 bond for all obligations of the licensee that occur before the bond is  
16 canceled, expires, or otherwise becomes ineffective;
  - 17 5. Failure to maintain the bond for the period required by law is cause for  
18 revocation of the license; and
  - 19 6. If the bond is canceled, expires or otherwise becomes ineffective during  
20 the period of a license, the licensee shall be obligated to secure a new  
21 bond. If the licensee has not provided proof of a new bond before the  
22 thirtieth day after the date on which the bond was canceled, expired or  
23 otherwise became ineffective, the licensee shall cease to conduct  
24 business until a new bond is obtained or, if the licensee fails to cease  
25 business, the licensee shall be subject to revocation for failure of proof  
26 of responsibility.
- 27 C. Filing a Claim. Any person making a claim against a tax preparer subject to  
28 this Part may file a complaint with the City Clerk for submittal to the  
29 Independent Office of Hearings for the City of Albuquerque seeking  
30 administrative review of the claim. The complaint shall be on a form  
31 provided by the City Clerk and filed within three years of the filing of the tax  
32 return in question. The date of filing of the complaint will constitute a claim  
33 filed for purposes of establishing the order of priority in the event that the

1 licensee has more than one complaint seeking payment on the surety  
2 bond. A copy of the complaint shall be mailed, certified and receipt  
3 requested, to the surety bond company and the tax preparer.

4 **D. Review of Claim.** The review of any claim against the bond under this Part  
5 shall be pursuant to the procedures established for the Independent Office  
6 of Hearings at Chapter 2, Article 7, Part 8 ROA 1994 *et seq.* Should the  
7 Independent Hearing Officer find that a claimant suffered damages as a  
8 result of any violation of this Part by any tax preparer and has entered an  
9 order recommending approval of the claim against the bond in an amount  
10 specified, for actual damages or the sum of five hundred dollars (\$500) per  
11 violation, whichever is greater, then this recommendation shall be  
12 submitted to the surety bond company.

13 **E. Effect of Payment of Claim.** Upon receipt of any recommendation of a  
14 claim from the Independent Hearing Officer, the surety bond company shall  
15 make a determination on the claim within the time period specified by the  
16 terms of the Bond.

17 **§ 13-20-1-17 JOINT AND SEVERAL LIABILITY.**

18 Any person who employs or contracts with another person to provide tax  
19 preparation services shall be jointly and severally liable for violations of this  
20 Part with the employed or contracted tax preparer so long as said tax preparer  
21 provides any portion of the challenged tax preparation service within the City  
22 of Albuquerque.

23 **§ 13-20-1-18 DENIAL AND SUSPENSION OF LICENSE; APPEALS.**

24 **A.** An applicant or licensee seeking to appeal a denial, revocation,  
25 suspension, or fine under this Part shall do so by adhering to the  
26 procedures established for the Independent Office of Hearings at Chapter  
27 2, Article 7, Part 8 R.O.A. 1994 *et seq.* The appeal must be received within  
28 ten (10) working days of the notice of the challenged City act.

29 **B.** If a Hearing Officer finds that a tax preparer, or one of their agents or  
30 employees, with said tax preparer's knowledge or consent, has failed to  
31 comply with this Part or other applicable law, the Hearing Officer may, after  
32 an opportunity for a hearing:

33 1. Deny an application or renewal;

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- 1        2. Revoke a license;
- 2        3. Suspend a license;
- 3        4. Impose fines pursuant to Chapter 1, Article 1, Section 99 R.O.A. 1994 *et*
- 4        *seq.*; or
- 5        5. Reinstate a license should the tax preparer demonstrate compliance in
- 6        the challenged instance.
- 7        C. The Hearing Officer may waive a denial under Section 13-20-1-13(A) above
- 8        if the applicant or licensee provides substantial evidence that,
- 9        notwithstanding such conviction, judgment, or finding, said applicant,
- 10       licensee, or personnel thereof are:
- 11       1. Responsible; and
- 12       2. Of good character and reputation.

13        § 13-20-1-19 ENFORCEMENT.

- 14        A. The City may implement and enforce this Part.
- 15        B. The Mayor or the Mayor's designee is authorized to promulgate
- 16        regulations, rule, and instructions to implement this Part. Each separate
- 17        violation shall constitute a separate offense and each day of violation shall
- 18        constitute a separate offense.
- 19        C. The provisions of this Part shall apply to any person who seeks to evade
- 20        its applicability by any device, subterfuge, or pretense.
- 21        D. This Part does not provide the exclusive remedy and does not prevent the
- 22        City from seeking civil public enforcement of this Part via injunction or
- 23        other available equitable and legal relief.
- 24        E. Nothing in this Part shall be construed to preempt, otherwise limit, or affect
- 25        the applicability of any other law, regulation, rule, requirement, policy, or
- 26        standard.

27        § 13-20-1-20 SEVERABILITY.

28        If any portion of this Part is determined to be invalid for any reason by a

29        final non-appealable order of any court of this state or a federal court of

30        competent jurisdiction, then it shall be severed from the the Part. All other

31        provisions of this Part shall remain in full force and effect.

32        § 13-20-1-21 EFFECTIVE DATE.



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- 1 **A. Compilation. This Part shall amend, be incorporated in and compiled as**
- 2 **part of the Revised Ordinances of Albuquerque, New Mexico, 1994.**
- 3 **B. Effective Date. Sections 13-20-1-1 through 13-20-1-10, Section 13-20-1-17**
- 4 **and Sections 13-20-1-19 through 13-20-1-21, shall take effect five (5) days**
- 5 **after publication by title and general summary. Sections 13-20-1-11 through**
- 6 **13-20-1-16 and Section 13-20-1-18 shall take effect one hundred and eighty**
- 7 **(180) days after publication by title and general summary.**

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# CITY OF ALBUQUERQUE


Albuquerque, New Mexico  
Office of the Mayor

Timothy M. Keller, Mayor

## INTER-OFFICE MEMORANDUM

DATE: November 12, 2020

**TO:** Patrick Davis, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** ADDING ARTICLE 20 OF CHAPTER 13 OF THE REVISED ORDINANCES OF ALBUQUERQUE TO ADD PART 1 CREATING THE ALBUQUERQUE TAX PREPARERS AND CONSUMER RIGHTS ORDINANCE


The Mayor's Office recommends adoption of the Amendment to Article 20 of Chapter 13 to add Part 1 creating the Albuquerque Tax Preparers and Consumer Rights Ordinance to establish protection for consumers receiving services from paid tax preparers, as defined, and requiring licensure, disclosures and bonding for covered tax preparers doing business in Albuquerque.

The Ordinance will:

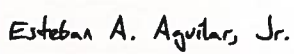
- Be applicable to for-profit/paid tax preparers, as defined, operating in Albuquerque (excludes CPAs, lawyers, IRS enrolled agents, non-profit providers);
- Require written disclosures such as:
  - Tax Preparer Disclosure of specific information, such as name, address, PTIN from IRS;
  - Fee Schedule
  - Written Estimate of Fees
  - Consumer Bill of Rights
  - Requirement to review disclosures and attest to review.
- Adopt Licensure of for-profit tax preparers to set a framework for compliance overview and bonding of tax preparers;
- Require bonding of the for-profit tax preparers to provide remedies to consumers who are harmed;
- Restrict marketing of high cost Refund Anticipation products as a condition of having taxes prepared;
- Provide primary enforcement through private remedies and claims against the bond, while also allowing discretionary public enforcement by the City; and,
- Other appropriate protections.

**SUBJECT:** ADDING ARTICLE 20 OF CHAPTER 13 OF THE REVISED ORDINANCES OF ALBUQUERQUE TO ADD PART 1 CREATING THE ALBUQUERQUE TAX PREPARERS AND CONSUMER RIGHTS ORDINANCE


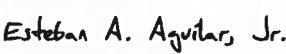
Approved:

 11/20/20  
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Sarita Nair, JD, MCRP Date  
Chief Administrative Officer

Approved as to Legal Form:

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Esteban A. Aguilar, Jr. Date  
City Attorney

Recommended:

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 SMADCA  
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Director, Esteban A. Aguilar, Jr.

11/19/2020 | 1:32 PM MST

Date

## **Cover Analysis**

### **1. What is it?**

*An New Ordinance titled Tax Preparer and Consumer Rights Ordinance*

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

*This Ordinance will regulate paid tax preparers, as defined, who offer tax preparation services to consumers in Albuquerque; require disclosures to consumers regarding fees, costs, qualifications and other information before entering into tax preparation services; provide consumer protections through a Consumer Bill of Rights; require covered tax preparers to be licensed and bonded; and provide private and public enforcement remedies for persons harmed.*

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

*Persons who provide tax preparation services for a fee, other than CPAs, attorneys, not-for-profit organizations, are unregulated by state law. Consumers may face unfair and deceptive practices as reported by community members and organizations. This ordinance creates protections for consumers, disclosure requirements and procedures for remedies in the event of violations.*

### **4. How much will it cost and what is the funding source?**

*There is no associated cost.*

### **5. What will happen if the amendment is not approved?**

*There will continue to be no protections for consumers or regulatory requirements for paid tax preparers doing business in Albuquerque.*

**FISCAL IMPACT ANALYSIS**

TITLE: **Albuquerque Tax Preparers and Consumer Rights Ordinance** R: O:  
 FUND: 110  
 DEPT: Legal

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	Fiscal Years			
	2021	2022	2023	Total
Base Salary/Wages	-	-	-	-
Fringe Benefits at	-	-	-	-
Subtotal Personnel	-	-	-	-
Operating Expenses	-	-	-	-
Property	-	-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
[ ] Estimated revenues not affected				
[x] Estimated revenue impact				
Amount of Grant	-	-	-	-
City Cash Match	-	-	-	-
City Inkind Match	-	-	-	-
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.  
 \* Range if not easily quantifiable.

Number of Positions created

**COMMENTS:** There is an anticipated revenue for the application fee not yet set, the proposed amount for the Application fee is \$100 to be approved by the Mayor.

**COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:**

PREPARED BY:

DocuSigned by:  
*Kayeth Hernandez* 11/19/2020 | 1:27 PM MST  
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 FISCAL MANAGER

APPROVED:

DocuSigned by:  
*Esteban A. Aguilar, Jr.* 11/19/2020 | 1:32 PM MST  
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 DIRECTOR (date)

REVIEWED BY:

DocuSigned by: 11/19/2020 | 2:21 PM MST  
*Lawrence L. Davis*  
 EXECUTIVE BUDGET ANALYST BUDGET OFFICER (date)

DocuSigned by: 11/19/2020 | 4:07 PM MST  
*Christine Barner*  
 CITY ECONOMIST