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Title:	Amending The Code Of Ethics Relating To Financial Disclosures Of Elected Officials (Bassan, Peña, and Davis, by request)		
Sponsors:	Brook Bassan (By Request), Klarissa J. Peña (By Request), Pat Davis (By Request)		
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12/5/2022	1	City Council	Passed	Pass
11/21/2022	1	City Council	Accepted with a Recommendation Do Pass	
11/14/2022	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass	Pass
10/3/2022	1	President	Referred	
10/3/2022	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-45 ENACTMENT NO. _____

SPONSORED BY: Brook Bassan, Klarissa Peña, and Pat Davis, by request

ORDINANCE

Amending The Code Of Ethics Relating To Financial Disclosures Of Elected Officials (Bassan, Peña, and Davis, by request)

AMENDING THE CODE OF ETHICS RELATING TO FINANCIAL DISCLOSURES OF ELECTED OFFICIALS.

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WHEREAS, the City of Albuquerque seeks to encourage transparency and accountability in government; and

WHEREAS, comprehensive disclosure requirements in the Code of Ethics will reinforce the high ethical standards the City expects of elected officials.

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

SECTION 1. Article XII, Sections 2 and 5 are hereby repealed in their entirety and replaced with the following:

“Section 2. DEFINITIONS

(a) “Beneficially owned” means a beneficiary's interest in trust property.

(b) “Board” means the Board of Ethics and Campaign Practices established pursuant to Article XII of this Charter.

(c) “Business Dealings” or “Business Dealings With The Governmental Body” includes circumstances where a person is: (1) presently a party to a contract with the city; (2) presently a subcontractor under a subcontract with a party under contract with the city; (3) bidding, proposing, or applying for contracts with the city; (4) a party in litigation with the city; (5) a party before a quasi-judicial administrative proceeding conducted by a city board, commission, committee or hearing officer; or (6) a party to an appeal of a decision of a city department, quasi-judicial administrative board, commission, committee or hearing officer.

(d) “Business entity” means a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any other legal or commercial entity.

(e) “Candidate” means any individual who has: (1) obtained a nominating petition from the City Clerk pursuant to Section 4(c)1.D. of the Election Code for the office of Mayor or Councilor; (2) filed an affidavit on a form approved by the City Clerk stating that they are a candidate for either the office of Mayor or City Councilor; (3) filed as a candidate for elected office as required by law, whichever first occurs; or (4) has received or solicited contributions or made expenditures of one thousand dollars ($1,000) or more or authorized another person or campaign committee to receive or solicit contributions or make expenditures of one thousand dollars ($1,000) or more for the purpose of seeking election to the office.

(f) “Consideration” means something of value or a written promise to pay or otherwise provide something of value which is enforceable through the courts.

(g) “Contract with the City” means a written contract to: (1) purchase real property from the

city; (2) sell real property to the city; (3) rent real or personal property to or from the city; or (4) provide services and/or goods to the city. A Contract with the City shall also include all subdivision improvement agreements for the private development of public infrastructure and associated easements and revocable permits. Contracts excluded from this definition are those for services provided by the city such as water, wastewater or solid waste collection; intergovernmental agreements such as a joint powers agreement or a memorandum of understanding. Permits and licenses issued by the city shall not be deemed contracts with the city for purposes of the Ethics Code.

(h) “Controlled” means the ability of a person, through share ownership or other means, to make changes in the management of a business entity or to appoint persons who will control the management of that business entity.

(i) “Disclosure statement” means a statement on a form prepared by the City Clerk for purposes of compliance with this ordinance.

(j) “Direct Interest”, “Private Interest” or “Private Financial Interest” means an interest concerning: (1) a partnership, limited liability partnership, limited liability company, corporation, or any other for-profit entity in which an official owns an interest of 10% interest or more; or (2) a corporation, partnership, limited liability partnership, or limited liability company in which the official is an officer, director, or agent. Direct Interest, Private Interest or Private Financial Interest does not mean an interest in stock owned indirectly through a mutual fund, retirement plan, or other similar commingled investment vehicle the individual investments of which the official does not control or manage.

(k) “Gift” or “Valuable Gift” means that which is directly or indirectly paid or given to another for an individual’s benefit or by any other means, for which consideration equal or greater than fair market value was not given by the official within 90 days of the official's receipt of such gift, including, but not limited to: (1) real property; (2) the use of real property; (3) tangible or intangible personal property; (4) the use of tangible personal property; (5) a preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is neither a government rate nor a rate available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin; (6) debt forgiveness; (7) transportation, other than that provided to an official by a governmental agency in relation to approved government business, lodging or parking; (8) food or beverage; (9) membership dues, other than dues paid by a city agency; (10) entrance fees, admission fees, or tickets to events, performances, or facilities

other than those hosted, sponsored, or co-sponsored by the city or occurring at a city facility; (11) plants, flowers, or floral arrangements; (12) services provided by persons pursuant to a professional license or certificate; (13) other personal services for which a fee is normally charged by the person providing the services; and (14) any other similar service or thing having an attributable value not already provided for in this section. For purposes of calculating the dollar limits to the term “gift”, any gift provided by a lobbyist shall be attributed to the lobbyist individually as well as to the business organization which he or she owns or by which he or she is employed. Gift does not include: (1) salary, benefits, services, fees, commissions, returns on an investment, a loan, interest incurred on a bond, expenses, or other forms of compensation associated primarily with the official's employment, business or service as an officer or director of a private corporation or organization; (2) any activity authorized by the Election Code, the Code of Ethics, and items excluded from the definition of “contributions” pursuant to Section 2(g)(3) of the Election Code, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement; (3) an honorarium or an expense related to an honorarium event paid to an official or the official's spouse; (4) an award, plaque, certificate, or similar personalized item given in recognition of the official's public, civic, charitable, or professional service; (5) an honorary membership in a service or fraternal organization presented merely as a courtesy by such organization; (6) the use of a public facility or public property made available by a governmental agency for a public purpose; (7) transportation provided to an official by a governmental agency in relation to official and approved governmental business; (8) gifts provided directly or indirectly by a state, regional or national organization whose primary purpose is the promotion of the exchange of ideas between governmental officials or employees or to provide for the professional development or training of such governmental officials or employees, provided that such organization has a membership primarily composed of elected or appointed public officials or employees; (9) the use of a city facility by an official; (10) a gift motivated by a familial or close personal relationship rather than the recipient's position as an official; and (11) all non-pecuniary things or services donated in any twelve (12) month period from a single donor that have a cumulative fair market value of two hundred fifty dollars ($250.00) or less.

(l) “Governmental Body” means the City of Albuquerque and any of its boards, commissions and committees.

(m) “Immediate Family” or “Immediate Family Member” means spouse, children, step-children, parents, grandparents, grandchildren, siblings, first cousins, nieces, nephews, uncles and aunts.

(n) “Income” means the money or other form of payment that a person receives from labor or services, including from employment, a business entity, contracts, goods or services rendered and investments.

(o) “Indirect interest” or “indirect private financial interest” means any interest in which legal title is held by another as trustee or other representative, but the equitable or beneficial interest is held by the official or the official's immediate family. Indirect interest shall include a pecuniary or competitive advantage that exists or could foreseeably accrue as a result of the act or inaction of the official.

(p) “Office” means a position of duty, trust or authority.

(q) “Official” means the Mayor; all members of the Council; all members of boards, commissions and committees; all directors and the equivalent thereof for each department, division or section; assistant, associate or deputy department, division or section directors and the equivalent thereof; the Director of Council Services; the Chief Administrative Officer; Deputy or Assistant Chief Administrative Officers and the equivalent thereof; and all other city employees appointed directly by the Council, Mayor or Chief Administrative Officer.

(r) “Ordinary consumer debt” means a personal debt owed as a result of purchasing goods used for individual or household consumption, including credit card debt and auto loans.

(s) “Participate in a political campaign” means: (1) to hold a paid position in a campaign; (2) to hold an unpaid position in a campaign that includes a title or functions in a manner that would typically include a title; (3) to host a fundraiser for a candidate or host a house party or any other event for a candidate or campaign; (4) to volunteer for a candidate or campaign; (5) contribute to a candidate or campaign; (6) electronically posting or sharing candidate or campaign materials or communications, or otherwise publishing statements that reference a candidate or campaign, via social media or otherwise. “Participate in a political campaign” does not include: (1) signing a nominating petition; (2) making a $5 qualifying contribution to a candidate seeking public financing; (3) “liking” a social media post that references a candidate or campaign.

(t) “person” means any individual, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, profit or nonprofit organization, or other legal entity.

(u) “public agency” means a department, commission, council, board, committee, agency or institution of the executive or legislative branch of state government or a political subdivision of the state or an instrumentality of the
state or of a political subdivision of the state.

(v) “Publicly endorse” means: (1) to publish in any way a statement of support or approval regarding a candidate or campaign; (2) to knowingly allow one's name to be published by others as endorsing a candidate or campaign; (3) to appear in advertisements of any sort for a candidate or campaign. “Publicly endorse” does not include: (1) a statement of personal opinion in a non-public setting to another individual; or (2) a publication regarding a Board of Ethics ruling.

(w) “Publicly oppose” means: (1) to publish in any way a statement of opposition or criticism regarding a candidate or campaign; (2) to knowingly allow one's name to be published by others as opposing a candidate or campaign; (3) to appear in advertisements of any sort opposing or criticizing a candidate or campaign. “Publicly oppose” does not include a statement of personal opinion in a non-public setting to another individual or a publication regarding a Board of Ethics ruling.

Section 5. DISCLOSURE

(a) An official of the city with any private financial interest in any contract or other matter pending before or within the governmental body the official is employed by or a member of, shall file an annual disclosure statement to the governmental body.

(b) Any Councilor who has a direct or indirect interest in any matter pending before the Council shall disclose such interest on the records of the Council. The existence of a direct or indirect private financial interest on any matter coming before the Council, including approval of a contract, shall disqualify a Councilor from debating and voting on the matter. A majority of the remaining members of the Council shall determine whether a Councilor has a direct or indirect interest and whether the Councilor shall be allowed to vote and participate in the decision-making process related to the matter. A Councilor who has a conflict of interest may voluntarily decline to vote and participate in the decision-making process related to the matter.

(c) The Mayor and each City Councilor, during their term of office, shall file contribution and expenditure disclosure statements on the second Monday in May and November of each year setting out all contributions and expenditures, as defined in the City Election Code, during the previous period, raised or spent in connection with any campaign or pre-campaign activity for any elected office. Expenditures of public funds in the regular course of the Mayor or Councilor's official duties are not contributions and expenditures subject to such disclosure under this section. The Mayor and Councilors are not required to file a biannual statement if they have had no campaign or pre-campaign contributions or expenditures during the previous period. These reporting requirements shall be in addition to the reporting requirements of the Election Code,

provided that any information filed with the City Clerk pursuant to City Charter Article XIII, Section 4(c) need not be included in the subsequent biannual reports required by this section. The contributions and expenditures identified in the biannual statements that are to be applied to a campaign for election to a city office shall be included in the first campaign disclosure report that the candidate files pursuant to the Election Code.

(d) All elected officials shall file with the City Clerk an annual disclosure statement listing all of the changes or additions to the disclosure information provided by the elected official at the time of filing his or her declaration of candidacy pursuant to Section 3 of the Election Code. If no changes have occurred, the elected official shall so state in the annual disclosure statement. The annual disclosure statement shall be due on the first city work day of July and shall be submitted on a form approved by the City Clerk. The annual disclosure statement shall be a public record.

(e) In addition to the information disclosed pursuant to Section 3 of the Election Code, the annual disclosure statement for all elected officials shall include the following information for the preceding calendar year:

(1) the full name of the reporting individual and **the reporting individual's spouse;**

(2) the name and address of any employer employing the reporting individual or the reporting individual's spouse, the title or position held, and a brief description of the nature of the business or occupation;.

(3) the identity, location and purpose of use of real property owned by the reporting individual, the reporting individual's spouse or the reporting individual's dependent children; provided that, for personal residences only the zip code or, in the absence of a zip code, the county of situs is
required to be disclosed;

(4) the identity of assets of more than fifty thousand dollars ($50,000) directly or beneficially owned by the reporting individual, the reporting individual's spouse or the reporting individual's dependent children; provided that, in determining whether an asset has a value of more than fifty thousand dollars ($50,000), the value should not be reduced by any debt secured by the asset, such as a mortgage or other secured loan, and a good faith estimate of the fair market value of an asset is permitted if the exact value is neither known or easily obtainable. The disclosure of assets shall include:

(A) commodities, including the type of commodity;

(B) investments in stocks, bonds, futures contracts, options,

derivatives, currency, real estate investment trusts, mutual funds, private equity funds, exchange-traded funds, and trust funds of which the reporting individual is a beneficiary; provided that if the investment is or forms part of a fund, the reporting individual is only required to identify the fund, the fund manager, and any underlying holdings of the fund that have a value of more than fifty thousand dollars ($50,000); and

(C) contractual rights that are reasonably likely to generate future income, such as royalties and intellectual property, the names of the contracting parties, and the purpose of the contract;

(5) all sources of income equal to or greater than the amount that must be disclosed to the internal revenue service pursuant to 26 U.S.C. Section 6041(a), as amended, directly or indirectly accrued by the reporting individual, the reporting individual's spouse or the reporting individual's dependent children, including:

(A) the identity of the source of earned income; provided that:

(i) if a source of earned income is owed a legal or professional duty of confidentiality and the identity of the source of the income has not been disclosed to a public agency, the reporting individual may identify the source as "confidential" and describe the duty of confidentiality that prevents disclosure of the source of the earned income; and

(ii) if an indirect source of earned income is a client of a business entity of which the reporting individual or the reporting individual's spouse is a member, the indirect source of earned income is not required to be disclosed if the reporting individual or the reporting individual's spouse has no role in any matter involving the source; and

(B) the identity of sources of unearned income, including taxable interest, capital gains, dividends, annuities, trust distributions, rents from real property and insurance policies;

(6) Liabilities of more than five thousand dollars ($5,000) owed by:

(A) the reporting individual, the reporting individual's spouse or the reporting individual's dependent children; and

(B) a trust of which the reporting individual, the reporting individual's spouse or the reporting individual's dependent children are beneficiaries;

(7) For a liability identified pursuant to Subsection (6) of this section, the reporting individual shall disclose:

(A) the identity of the person who owes the debt or liability;

(B) the person to whom the debt or liability is owed;

(C) the amount of the debt or liability; and

(D) any payments on the debt or liability during the previous calendar year;

(8) The disclosure statement is not required to include:

(A) ordinary consumer debt;

(B) mortgage debt on the primary residence of the reporting individual, the reporting individual's spouse or the reporting individual's dependent children;

(C) student loans; and

(D) liabilities owed to parents, grandparents, children or siblings of the reporting individual, the reporting individual's spouse or the reporting individual's dependent children;

(9) The following information related to any privately held business controlled by the reporting individual, the reporting individual's spouse or the reporting individual's dependent children:

(A) the name of the business entity, a brief description of the nature of its activities and its geographic location, including the city and state; and

(B) for a privately held business entity formed for the purpose of holding investments:

(i) assets of more than fifty thousand dollars ($50,000) or that generated income directly or beneficially owned by the business entity in an amount equal to or greater than the amount that must be disclosed to the internal revenue service pursuant to 26 U.S.C. Section 6041(a), as amended; provided that in determining whether an asset has a value of more than fifty thousand dollars ($50,000), the value should not be reduced by any debt secured by the asset, such as a mortgage or other secured loan; and

(ii) any liability of the business entity in an amount greater than fifty thousand dollars ($50,000), including:

(a) the identity of the business entity that owes the debt or liability;

(b) the person to which the debt or liability is owned;

(c) the amount of the debt or liability; and

(d) any payments on the debt or liability during the previous

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calendar year;

(10) The following information related to professional licenses, memberships and offices held for the prior calendar year:

(A) professional licenses held by the reporting individual and the reporting individual's spouse; and

(B) board memberships, offices or other positions held by the reporting individual and the reporting individual's spouse in:

(i) corporations, partnerships, trusts or other for-profit business entities; and

(ii) nonprofit organizations, educational organizations, political organizations or other nongovernmental organizations; and

(11) Any gift received in the prior calendar year by the reporting individual, the reporting individual's spouse or the reporting individual's dependent children having a market value greater than fifty dollars ($50.00) from a restricted donor, a registered lobbyist, a lobbyist's employer, a government contractor or a person that has responded to a request for proposals or an invitation to bid issued by the City."

SECTION 2. 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 3. COMPILATION. Section 1 of this ordinance shall amend, be incorporated in, and be made part of the City Charter.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five (5) days after publication by title and general summary.

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