



Legislation Text

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CITY of ALBUQUERQUE TWENTY THIRD COUNCIL

COUNCIL BILL NO. C/S O-19-56 ENACTMENT NO. _____

SPONSORED BY: Peña, Harris, Sanchez, Borrego

ORDINANCE

C/S Amending Article XII, Sections 2, 3, 5, And 8 Of The City Charter, And Amending Article XIII, Section 4, Of The City Charter (Peña, Harris, Sanchez, Borrego)

WHEREAS, in 1975 the City of Albuquerque adopted the Code of Ethics, which has been amended on various occasions since that time; and

WHEREAS, the City wishes to provide transparency for its residents and accountability for its Officials; and

WHEREAS, the proper operation of democratic government requires that Candidates, elected Officials, employees and volunteers of local governments be independent, impartial and accountable to the people and that the public have confidence in the integrity of its government; and

WHEREAS, a clear and comprehensive Code of Ethics will establish guidelines for ethical standards of conduct for all Candidates, elected Officials, employees, and volunteers;

WHEREAS, recent amendments to the Election Code changed reporting requirements for elected Officials, and additional sections of the Election require changes to correspond with those amendments; and

WHEREAS, Article XII, Section 12, and Article XIII, Section 12 allow the Council to amend the Code of Ethics and the Election Code by ordinance adopted by a majority plus two of the entire membership of the Council voting in favor of such amendments.

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

SECTION 1. Article XII, Section 2 of the Charter of the City of Albuquerque is hereby amended as follows:

“Section 2. DEFINITIONS.

(f) “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 [~~has invested capital or otherwise~~] owns an interest [~~of 10% interest or more; or,~~] (2) [~~a corporation in which an official owns (i) ten percent (10%) or more of the outstanding capital stock or (ii) capital stock with a cumulative value of \$25,000 or more; or (3)~~] 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.

(g) “Gift” or “Valuable Gift” means that which is accepted by an Official or by another on the Official's behalf, or that which is paid or given to another for or on behalf of an Official, directly, indirectly, or in trust for the Official's benefit or by any other means, for which Consideration equal or greater than fair market value is 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) forgiveness of an indebtedness, (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, or expenses associated primarily with the Official's employment, business or service as an officer or director of a private corporation or organization, (2) [any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the] ~~[contributions reported as campaign contributions pursuant to the]~~ Election Code[,], and the Code of Ethics, [and items excluded from the definition of "contributions" pursuant to Section 2(g)(3) of the Election Code.] (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 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 that is primarily composed of elected or appointed public Officials or employees, (9) the use of a city facility by an Official, [(10) a gift that is motivated by a family relationship or close personal relationship rather than the recipient's position as an Official], and (10) 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 ~~[one hundred (\$100.00)]~~ [two hundred fifty dollars (\$250.00)] or less.

(r) "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 fundraisers, house parties or any other events 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.

(s) “Publically endorse” means (1) to publish in any way a statement of support or approval regarding an 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.

“Publically 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.

(t) “Publically oppose” means (1) to publish in any way a statement of opposition or criticism regarding an 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 that oppose or criticize a Candidate or campaign.

“Publically oppose” does not include a statement of personal opinion in a non-public setting to another individual, or (2) a publication regarding a Board of Ethics ruling.
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SECTION 2. Article XII, Section 3 of the Charter of the City of Albuquerque is hereby amended as follows:

“Section 3. BOARD OF ETHICS AND CAMPAIGN PRACTICES.

(a) The Board shall be made up of seven members, who shall be chosen as follows: The Council shall appoint three members and the Mayor shall appoint three members. The six members so appointed shall select a seventh person to serve as Chairperson of the Board. [A simple majority of members shall constitute a quorum.] The appointment of a Board member by one appointing authority shall not be approved or disapproved by the other two appointing authorities. Each member shall be a qualified elector of the city, and no member shall be an Official or employee of the city or the spouse, parent or child of an

Official or city employee.

[1. No member of the Board shall (1) have held public office as a City Official or have been a Candidate, as defined in Article XIII, Section 2, for a two-year period prior to appointment; (2) seek or hold an elective public office or an appointed public position while serving on the Board; (3) participate in any political campaign for a candidate who is a City Official or Candidate, as defined in Article XIII, Section 2, while serving on the Board; (4) be a Lobbyist, or be employed by or have an equity interest or ownership interest in a Lobbying Organization, as defined in ROA § 2-3-3, while serving on the Board; (5) be a paid political campaign employee, or be employed by, or have an equity interest or ownership interest in, a business entity that derives any of its revenue or income from political campaign work, while serving on the Board; (6) have a Contract with the City as defined in Article XII, Section 2, while serving on the board; (7) publicly endorse or publicly oppose a ballot initiative, a candidate who is a City Official or a Candidate, as defined in Article XIII, Section 2, while serving on the Board; or (8) solicit funds for a Measure Finance Committee, Candidate Finance Committee, or Candidate as defined in Article XIII, Section 2, while serving on the Board.

2. A Board member who is found to have violated any of the provisions of Subsection (a)(1) of this Section shall resign from the Board, or if the Board member fails to resign the member shall be removed pursuant to Board of Ethics rules.

3.] There shall be a public comment period for any individual proposed for membership on the Board of Ethics and Campaign Practices by the Mayor, the Council and for the seventh member selected by the Board. The name and resume of any individual proposed for membership shall be posted on the city's website at least two weeks, via an agenda published by City Council or otherwise, prior to the date when final action is taken to appoint that individual. Any Person shall be allowed to submit comments about the proposed member by written submission, electronically or otherwise, to the City Clerk.

[4.] The members of the Board of Ethics and Campaign Practices shall receive at least six hours of training prior to acting in the capacity of a Board member. The training shall be provided by the City Attorney and shall cover the ethical responsibility of Board members and the content of the Code of Ethics and the Election Code as those codes relate to the duties of the Board. The training requirement shall not apply to any current Board member, who shall continue to serve their unexpired term, or to any Board member

reappointed at the end of a term.

(b) All members shall serve terms of four years, and be eligible for reappointment for additional terms, not to exceed two terms consecutively[, consisting of the initial term the member was appointed to and the second, consecutive term]. Terms are staggered and shall continue with the same term cycle as currently exists. Any vacancy shall be filled for an unexpired term by the same authority that made the original selection and appointment of the member vacating his or her position. [Members may continue in office after their term has expired until a successor is appointed. If a member continues to serve for more than one hundred eighty days (180) after his or her term has expired, his or her successor shall be eligible for appointment to a full four-year term.]

(c) [The jurisdiction of the Board is limited to acting within the scope of matters covered by the Code of Ethics, the Election Code, the Open and Ethical Elections Code, and rules promulgated by the Board and/or the City Clerk. When a complaint contains allegations outside the scope of the Board's jurisdiction, the City reserves the right to refer all or part of the complaint to any agency or law enforcement agency with competent jurisdiction for criminal or civil investigation or prosecution.]

[(d)] No 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 Clerk] shall be found by the Board of Ethics and Campaign Practices except upon the concurrence of a majority of the Board.

[(e) Any rules promulgated by the City Clerk for the purposes of administering the Code of Ethics shall be submitted for receipt to the City Council.]

[(f) The Board shall:

(1) meet as necessary, at least once in each calendar quarter to carry out its duties;

(2) receive and investigate complaints regarding possible violations 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 Clerk;

(3) hold hearings when necessary to determine whether there has been a breach as alleged in a complaint;

(4) contract for professional services as necessary to carry out duties;

(5) provide the Mayor and City Council with an annual report 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 Clerk, the number of complaints submitted to the Board by the City Clerk, and a summary of the status of each complaint to include the date of the complaint, the date for the case to be heard, and date for possible final action. The annual report shall be submitted to Council in July of each year, and shall also include any recommendations regarding amendments to City ethics or 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.

[(d)] [(f)] The Board shall have the authority to administer oaths, and power to issue administrative subpoenas to compel witnesses to testify and produce records and documents before the Board. The Board may promulgate rules and regulations establishing procedures for issuance of subpoenas. The Board may request the City Attorney to enforce such subpoenas in a court of proper jurisdiction.

[(e)] [(g)] The Board may issue to Candidates, Officials, and lobbyists advisory opinions concerning ~~[the Code of Ethics and the Election Code]~~ [the Code of Ethics, the Election Code, the Open and Ethical Elections Code, and rules promulgated by the Board and/or the City Clerk. Candidates and Officials shall make all requests for advisory opinions in writing to the City Clerk. The City Clerk shall maintain a contract with outside, independent legal counsel to draft the advisory opinion, which shall be submitted to the Board of Ethics for consideration of approval within fourteen (14) days of a written request for advisory opinion being received by the City Clerk. Within thirty (30) days of receiving the proposed advisory opinion, the Board shall vote to adopt or decline to adopt the proposed advisory opinion as written. If the Board of Ethics declines the proposed advisory opinion, the 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 request.]

A request for an advisory opinion and the opinion approved by the 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.

[(h) Limitations on Complaints.]

(1) The Board will not set for hearing any complaint charging a violation alleged to have occurred more than one hundred twenty (120) days prior to the date the complaint is filed unless the facts and documentation supporting the charges alleged in the complaint were not public knowledge or available for public inspection within that time frame.

(2) In no event shall the Board hear a complaint alleging violations in which the violation occurred more than one (1) year prior to the date the complaint is filed unless the complainant also alleges fraud or purposeful misrepresentation on the part of the respondent to conceal the conduct that is the subject of the complaint.

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

(5) Notwithstanding the foregoing, the Board shall not adjudicate a complaint filed against a Candidate less than seven (7) days before election day. The time limitations referenced in this section 'h' applicable to a complaint shall not include the seven (7) day blackout period prior to election day.]

~~[(f)]~~ [(i)] A Board member who has participated in any hearing on a case concerning a complaint alleging a violation of the Code of Ethics or the Election Code shall continue to serve as a Board member on such case until the completion of the case, regardless of the expiration of that Board member's term, but only when the Board has voted on a matter concerning the case. A replacement Board member shall not serve on such cases.

~~[(g)]~~ [(i)] Board Member Conflicts of Interest and Recusals.

(1) A] Board member[s] shall not hear complaints involving Candidates or Measure Finance Committees to which they have contributed [within three (3) years prior to the complaint] or have participated in [the Candidate's or Measure Finance Committee's] [their] campaign activities [within three (3) years prior to the complaint.] [n][N]or shall [they] [Board members] hear cases involving complaints concerning Candidates and Measure Finance Committees who are in opposition to the Candidates or Measure Finance Committees to which the Board member contributed or participated in their campaign activities [within three (3) years prior to the complaint.

(2) A Board member is required to recuse himself or herself from an official matter that involves any individual, association, corporation or other entity that employed or did business with the Board member during the one year prior to the Board member's appointment to the Board. The recusal shall remain in effect until the Board no longer has any interest in the matter.

(3) A Board member is required to recuse himself or herself on an official matter if the member had any involvement in that matter, other than on behalf of the City, prior to the Board member's appointment to the Board. The recusal shall remain in effect until the Board no longer has any interest in the matter.

(4) A Board member must recuse himself or herself from a matter if the member has:

A. Any financial interest, direct or indirect, that is incompatible with the discharge of the Board member's duties; or

B. Any personal interest, direct or indirect, that is incompatible with the discharge of the Board member's duties.

(5) For purposes of (4) above, there is a rebuttal presumption that an incompatible financial or personal interest includes, but is not limited to, outside employment; a debtor/creditor relationship; a relationship involving legal representation; a fiduciary relationship; a source of income; any matter pertaining to or involving a relative or cohabitant of the member; a relationship with a Person providing funds, goods or services without compensation; any matter pertaining to or involving a business associate or business investment; and a leadership role in a professional or trade organization, which interest might reasonably be expected to impair a Board member's objectivity and independence of judgment in the exercise of his or her official duties or might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that the member may be engaged in conduct violative of his or her trust as a Board member.

(6) An incompatible financial or personal interest may exist in other situations which are not clearly within the provisions of (4) and (5) above, depending on the totality of the circumstances. A Board member may contact the City Clerk for guidance in such cases.

(7) A Board member may seek the advice of the City Attorney or outside counsel as to the propriety of participation in a matter if any Person requests that a Board member recuse himself or herself from that matter. Oral advice, followed up by a writing to be provided to the full Board, may be provided by the City Attorney or outside counsel to avoid delay.

(8) If the propriety of a Board member's participation in a particular matter is questioned on the grounds that the member has a conflict of interest and if the member refuses to recuse from participation in the matter, the Board may disqualify that member from participation in the relevant board proceeding with concurrence of a majority of members.

(k) If the Board finds, upon a majority vote of the board, that a Candidate, elected Official, Measure Finance Committee, or lobbyist has violated the Code of Ethics, the Election Code, the Open and Ethical Elections Code, and/or rules promulgated by the

Board and/or the City Clerk, the Board may impose any of the following penalties, subject to the individual's existing rights under a collective bargaining agreement and/or the Merit System Ordinance, after the entry of written findings of fact and conclusions of law:

(1) A civil fine not to exceed the maximum set by state law;

(2) A written finding of censure;

(3) When an Official or Candidate has committed an act that the Board believes may constitute a violation of the State Election Code, NMSA 1978 § 1-1-1, et seq., the Board may refer the matter to the Secretary of State and/or the State Ethics Commission.

(l) Nothing in this Section shall be read to preclude the Board from referring any matter to appropriate enforcement authorities.

(m) No former member of the Board may represent any business or Person, other than himself or herself, before the Board for a period of one year following the end of such member's service on the Board.

(n) Any member who misses three consecutive meetings, unexcused by the chair, shall be deemed to have resigned from the Board and may be replaced by the original appointing authority. Members may attend non-quasi-judicial hearings by phone.

(o) A recused or disqualified Board member shall not participate in any proceeding related to the matter from which the member is recused or disqualified, and the member shall be excused from that portion of a meeting at which the matter is discussed.

(p) If a majority of Board members have recused themselves or are disqualified from participating in a proceeding, the remaining members shall request the appointment of temporary members from the original appointing authorities that appointed the recused or disqualified members. Appointing authorities shall appoint temporary members within ten (10) days of the request for appointment.

(q) Ex parte communications. Members of the Board of Ethics shall not communicate ex parte with any Person or party or their representative in any quasi-judicial Board matter, except upon notice and opportunity for all parties to participate. The members of the Board may severally communicate with each other, in conformity with the Open Meetings Act, and may have the aid and advice of the City Attorney, City Clerk, or other appropriate city staff or outside experts when such assistance is requested by the Board.]”

SECTION 3. Article XII, Section 5 of the Charter of the City of Albuquerque is hereby

amended as follows:

Section 5. DISCLOSURE.

(a) An Official of the city who shall have any Private Financial Interest in any contract or other matter pending before or within the Governmental Body of which the Official is employed or of which the Official is a member, shall disclose such Private Financial Interest to the Governmental Body

(b) Any [Councillor] [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 [Councillor] [Councilor] from debating and voting on the matter. A majority of the remaining members of the Council shall determine whether a [Councillor] [Councilor] has a direct or indirect interest and whether the [Councillor] [Councilor] shall be allowed to participate in the decision making process related to the matter and vote on the matter. A [Councillor] [Councilor] who has a conflict of interest may voluntarily decline to participate in the decision making process related to the matter and vote on such 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 [April] [May] and [October] [November] of each year setting out all contributions and expenditures, as defined in the City Election Code, during the previous [quarter] [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 there have been no campaign or pre-campaign contributions or expenditures during the previous [quarter] [period] by or for the particular Mayor or Councilor. 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 in this section. The contributions and expenditures identified in 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 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 statement. The annual 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 statement shall be a public record.

[(e) In addition to the information disclosed pursuant to Section 3 of the Election Code, the disclosure of financial interests for all elected Officials shall include the following information for the preceding calendar year in regard to the Official required to file the statement:

(i) The names of all businesses with which the Official is associated;

(ii) all sources of income, including the name of each employer, with a description of the type of income received, in excess of five thousand dollars (\$5,000), without specifying amounts of income;

(iii) all real property and its location, whether owned by such Official or held in the name of a corporation, partnership or trust for the benefit of such Official;

(iv) any leases or contracts with the City or a quasi-public agency held or entered into by the Official or a business with which the Official was associated;

(f) The statement of financial interests filed pursuant to subsection (e) shall be a matter of public information.

(g) Any individual who is unable to provide information required under the provisions of subsection (e) of this section by reason of impossibility may petition the Board of Ethics for a waiver of the requirements.]

SECTION 4. Article XII, Section 8 of the Charter of the City of Albuquerque is hereby amended as follows:

Section 8. ENFORCEMENT; VIOLATION; PENALTY; AUTOMATIC FINES; REMOVAL FROM OFFICE; APPEAL.

(a) Any charge of violations of this Code of Ethics shall be brought before the [City Clerk] [Board of Ethics and Campaign Practices]. Any private citizen may initiate such a charge in accordance with regulations established by the [City Clerk] [Board of Ethics and Campaign Practices].

(b) Should the Board find, after [referral of the complaint from the City Clerk and] due hearing, that a violation has occurred, it may make a public reprimand or impose a fine of not to exceed \$500 for each violation or do both.

(c) Automatic Fines. Notwithstanding subsection (b) of this section, a failure of an elected Official to file a biannual report required in Section 5 of this Code of Ethics or the filing of a false report shall subject the elected Official to an automatic fine according to the schedule of fines established in the Rules and Regulations of the Board and a public reprimand. The Board may establish in its Rules and Regulations additional automatic fines for the failure of an elected Official to file a report or correct a report after the initial determination by the Board that the elected Official failed to file a report or that the report was false. In situations where there is an incomplete filing, the elected Official shall be notified by the City Clerk that the biannual report is incomplete. The elected Official shall have ten days from the date of notice to complete the biannual report. If the incomplete biannual report is not completed within ten days, the elected Official shall be subject to an automatic fine according to the schedule of fines established in the Rules and Regulations of the Board and a public reprimand. If the report is completed within ten days and the Board determines from the face of the filings that any omissions in the report were inadvertent and made in good faith, the Board shall find that there has been no violation. The City Clerk shall issue all automatic fines required in this subsection, subject to the appeal procedures established in the Rules and Regulations of the Board.

(d) In addition to imposing such sanctions, or as an alternative thereto, the Board may recommend to the Council that an appointed or employed Official be suspended or removed from office or that an elected Official be removed from office.

(e) The Council may, upon the recommendation of the Board of Ethics and Campaign Practices, and after due hearing of the charge, order the suspension or removal of an appointed or employed Official, or the removal of an elected Official; provided, however, that no Official shall be removed or suspended except upon the concurrence of two-thirds of the ~~[Councillors]~~ [Councilors] qualified to vote thereon.

(f) An appeal may be taken from any findings and action of the Board pursuant to Subparagraph (b) of this Section, and from any order of the Council pursuant to Subparagraph (d) of this Section, to the District Court of the 2nd Judicial District, by filing Notice of Appeal in the said District Court within 5 days of the date of the action or order

appealed from, and by filing with said District Court within 30 days a true transcript and record of the proceedings upon which said action or order is based. The hearing in the District Court shall be held on the said transcript and record only, and new testimony shall not be taken.

SECTION 6. Article XIII, Section 4(c)(1)(D) of the Election Code is hereby amended as follows:

“SECTION 4. CAMPAIGN FINANCING.

D. A Person seeking to qualify to be on the ballot for the office of Mayor or Councilor shall include any Person who has obtained a nominating petition form approved by the City Clerk, or who 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. The City Clerk shall issue an approved nominating petition only to the Person seeking to be on the ballot. Such approved nominating petition forms shall state the name of the Person and the city office for which such Person is petitioning to qualify to be on the ballot. People who have sought to be on the ballot as described above, but who do not qualify for the ballot or do not file a declaration of candidacy are required to file as provided in this section by 5:00 p.m. on the second Monday in May, a report of all expenditures made and contributions received on or before the first Monday in ~~[April]~~ [May] and not previously reported and to file a final report by 5:00 p.m. on the second Monday in November, a report of all expenditures made and contributions received on or before the first Monday in November and not previously reported.”

SECTION 7. Article XIII, Section 4(c)(2)(A) of the Election Code is hereby amended as follows:

“SECTION 4. CAMPAIGN FINANCING.

A. Except as otherwise provided in this section, a reporting individual shall file with the City Clerk by 5:00 p.m. on the second Monday in ~~[April]~~ [May] and ~~[October]~~ [November] a report of all expenditures made and contributions received on or before the first Monday in those months and not previously reported. The report shall be filed biannually until the reporting individual’s bank account has been closed and the other provisions specified in Subsection F of this section have been satisfied.”

SECTION 8. 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 9. COMPILATION. Sections 1 through 7 of this ordinance shall amend, be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 10. EFFECTIVE DATE. This ordinance shall take effect five days following publication by title and general summary.

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