



Legislation Text

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CITY of ALBUQUERQUE

TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-20-13 ENACTMENT NO. _____

SPONSORED BY: Diane G. Gibson, by request

ORDINANCE

Amending Article XII, Section XIII, Section 1 Of The City Charter; Article XIII, Sections 4, 5, 9, And 10 Of The City Charter; Article XVI, Sections 6 And 16 Of The City Charter; Chapter 2, Article 3, Section 8, ROA 1994; And Chapter 2, Article 4, Section 13 ROA 1994 To: Modify The Frequency The Board Of Ethics Must Meet; Eliminate The Board Of Ethics Required Report Submitted To The Mayor And City Council And The Need For The Board To Contract With Outside Counsel To Write Advisory Opinions; Grant The Board Of Ethics Chairman Authority To Avoid Dismissal Of An Unresolved Complaint Upon A Showing Of Good Cause; Remove The Mandatory Meeting Between Candidates And The Board Of Ethics And Campaign Practices On The Friday Before An Election; Update When And With Whom Campaign Material Is To Be Filed; Changing The Requirements For The Campaign And Election Auditor; Update The Enforcement Provisions To Remove Duplication With The Rules Of The Board Of Ethics And To Clarify That A Candidate Is Subject To The Enforcement Provisions For Failure To Pay A Penalty To The City Clerk; Clarifying When Applicant Candidates Can Accept Seed Money; Removing The Matching Funds Provision Of The City Charter; Aligning Lobbyist Disclosures With Their Required Quarterly Activity Reports; Adjusting Deadline For Mayoral And Councilor Candidates To Submit Qualifying Petitions To The City To Account For Changes In State Law (Gibson, by request)

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

WHEREAS, the Lobbyist and Lobbyist Organization Registration and Disclosure Ordinance

was last amended in 2019; and

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

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

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

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

CITY CHARTER, ART. XII, CODE OF ETHICS

Section 3. BOARD OF ETHICS AND CAMPAIGN PRACTICES.

(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~~[through the City Clerk]~~ 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.]~~

...

(h) The Board may issue to candidates, officials, and lobbyists advisory opinions concerning 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][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.

(i) Limitations on Complaints.

(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][the Chairman 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]~~[the Chairman of the Board] upon a showing of good cause.

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

CITY CHARTER, ART. XIII, ELECTION CODE

Section 4. CAMPAIGN FINANCING.

(i) Campaign Finance Records.

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

Section 5. CAMPAIGN MATERIALS.

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

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

(b) There is hereby created the position of Campaign and Election Auditor. The Auditor shall be ~~[either]a Certified Public Accountant[or][.] a Registered Public Accountant[.~~ or have other qualified campaign finance experience and shall:

Section 10. ENFORCEMENT.

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

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

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

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

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

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

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

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

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

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

- (1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or
- (2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of Article XIII, Section 4, and pays all penalties owed.

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

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

CITY CHARTER, ARTICLE XVI. OPEN AND ETHICAL ELECTIONS CODE

Section 6. SEED MONEY-IN-KIND CONTRIBUTIONS.

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

~~[Section 16. MATCHING FUNDS – OPPOSING FUNDS.~~

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

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

ARTICLE 3: LOBBYIST REGISTRATION

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

(B) Disclosure of Lobbyist Campaigning Activities.

(2) [The statements required by this section shall be filed as follows: the first statement shall be filed within five (5) City working days after the registration with the City Clerk that designates the official action the lobbyist or lobbying organization supports or opposes. The first statement shall show all contributions received and all expenditures made at any time in the past up to 5:00 p.m. of the day immediately prior to the date of filing. The first statement shall include all expenditures made and contributions received prior to registering with the City Clerk as well as such expenditures made and contributions received after the registration required under § 2-3-4 of this Ordinance. Additional statements shall be filed with the City Clerk every twenty-eight (28) calendar days from the date of the original registration until the lobbyist or lobbying organization provides a final statement. In the event no expenditures have been made and no contributions have been received during any of the required reporting periods, the lobbyist or lobbyist organization shall not be required to file a statement for that time period but shall be

required to submit a letter to the City Clerk stating that no contribution and expenditure activity occurred during the reporting period. The final disclosure statement shall include or be accompanied by a sworn statement that all lobbying campaigning has ceased on or before the date of such statement as to the official action designated in the registration. The final statement shall show all expenditures and contributions and may be filed at any time.][The disclosure required in this statement shall be filed quarterly, and as a component of the quarterly activity reports required in § 2-3-4. In the event that no expenditures have been made and no contributions have been received, the lobbyist or lobbyist organization shall submit the quarterly registration and affirm a statement of no activity.]

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

CHAPTER 2: GOVERNMENT

ARTICLE 4: MUNICIPAL ELECTIONS; PETITIONS

§ 2-4-13 FILING OF PETITIONS.

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

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

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

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

