

**CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL**

COUNCIL BILL NO. C/S O-22-40 ENACTMENT NO. 0-2022-042

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

**1 ORDINANCE
2 AMENDING ARTICLES, XII, XIII, AND XVI OF THE CITY CHARTER RELATING
3 TO ELECTIONS AND PUBLIC CAMPAIGN FINANCING.**

**4 WHEREAS, changes to the local election act require removing references
5 to management of elections that the City no longer maintains; and**

**6 WHEREAS, additional clarifications around campaign finance reporting
7 requirements are necessary to ensure clarity and transparency; and**

**8 WHEREAS, the 2021 election cycle highlighted the need for updates to the
9 Open and Ethical Election Code to ensure continued participation and
10 compliance; and**

**11 WHEREAS, Articles XII, XIII, and XVI allow the Council to amend these
12 Articles of the City Charter by ordinance adopted by a majority plus two of the
13 entire membership of the council voting in favor of such amendment or
14 amendments.**

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

**17 SECTION 1. Article XII, Section 9 of the City Charter is amended as follows:
18 "Section 9. INVESTIGATION.**

**19 (a) The Board or City Clerk may choose to ask for an investigation; to do this,
20 it may temporarily employ or contract with investigators and require
21 investigation by city staff assigned to the Board or by the Office of
22 Inspector General upon acceptance of the complaint, or upon evidence or
23 belief of fraud or a violation of the Charter. The Board or City Clerk shall
24 direct and limit the scope and nature of all such investigations. No such
25 investigation shall be undertaken unless it is specifically authorized and
26 defined by the Board or City Clerk. For the purposes of this section, the**

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1 term "allegations" means both any formal charges filed with the Board or
2 City Clerk or initiated by the Board or City Clerk and other information
3 raising a substantial question related to compliance with the Code of
4 Ethics, the Open and Ethical Election Code, or the Election Code. Such
5 investigation may relate to violation of the Code of Ethics, the Open and
6 Ethical Election Code, or the Election Code.

7 (b) In retaining an investigator, the Board of Ethics and Campaign Practices
8 shall not be bound by procedures of the City of Albuquerque which would
9 otherwise apply to selecting a contractor or employee. The Board shall
10 adopt its own procedures, consistent with good administrative practices.

11 (c) All officials and contractors of the City of Albuquerque shall furnish the
12 Board of Ethics and Campaign Practices or its investigator with requested
13 information and records within their custody which are germane to an
14 investigation authorized by the Board. Officials and contractors may be
15 required to appear as witnesses in hearings concerning ethics or campaign
16 practices charges heard by the Board.”

17 SECTION 2. Article XIII of the City Charter is amended as follows, with all
18 sections and subsections renumbered accordingly:

19 “Section 1. DECLARATION OF POLICY.
20 Public disclosure and regulation of certain campaign practices will serve to
21 increase public confidence in the integrity of government by informing the
22 public of the qualifications of a candidate for elective office and of the
23 possible sources of influence upon that candidate and of the financing of a
24 campaign to influence the passage or defeat of a measure. The principle that
25 the candidate assumes ultimate and complete responsibility for the conduct of
26 the campaign is therefore incorporated in to this Charter and shall be
27 implemented according to this Election Code.

28 Section 2. DEFINITIONS.

29 (a) "Anonymous Contribution" means a contribution received by a candidate
30 or a Measure Finance Committee for which the contributor cannot be
31 identified. Contributions received by a host pursuant to Section 4(j) of this
32 Election Code shall not be considered anonymous contributions.

33 (b) “Broadly Distributed” means material that has been sent, delivered, or

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- 1 transmitted to more than 100 people.
- 2 (c) "Board" means the Board of Ethics and Campaign Practices established
3 pursuant to Article XII of this Charter.
- 4 (d) "Campaign Materials" means any published, printed or broadly distributed
5 campaign advertising or communications such as newspaper
6 advertisements, handbills, petitions, circulars, letters, radio or TV
7 broadcasts, cable distributions, social media sites, websites, electronic or
8 telephonic transmissions or similar written material used in a campaign by
9 a candidate or a Measure Finance Committee.
- 10 (e) "Candidate" means any individual who has (1) obtained a nominating
11 petition from the City Clerk pursuant to Section 4(c)1.D. of this Election
12 Code for the office of Mayor or Councilor, (2) filed an affidavit on a form
13 approved by the City Clerk, stating that he or she is a candidate for either
14 the office of Mayor or City Councilor, (3) filed as a candidate for elected
15 office as required by law, whichever first occurs, or (4) has received or
16 solicited contributions or made expenditures of one thousand dollars
17 (\$1,000) or more or authorized another person or campaign committee to
18 receive or solicit contributions or make expenditures of one thousand
19 dollars (\$1,000) or more for the purpose of seeking election to the office.
- 20 (f) "Candidate Finance Committee" consists of the candidate, the candidate's
21 treasurer, and any person authorized either expressly or by implication by
22 the candidate to participate in the solicitation, receipt, expenditure, or
23 employment of contributions on behalf of the candidate. "Member of the
24 Candidate Committee" means any such person.
- 25 (g) "Candidate's Treasurer" means the person who is appointed by a candidate
26 to receive, keep and disburse all money which may be collected, received
27 or disbursed by the candidate, the Candidate Finance Committee, or any of
28 its members.
- 29 (h) "Contributions" means:
- 30 1. Monies, loans, debts incurred, obligations incurred, property in-kind,
31 including the use thereof, or commercial or professional services:
- 32 A. Incurred or received by a candidate, the candidate's treasurer, the
33 Candidate Finance Committee, or a member thereof on behalf of the

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1 candidate, or by a Measure Finance Committee or a member thereof
2 on behalf of the Committee. For the purposes of this Subsection, a
3 debt or obligation shall be considered incurred at the time
4 authorization is given or contract made for the debt or obligation.

5 B. Not received by a person or entity named in Subparagraph A above,
6 but expended or employed on behalf of a candidate or measure,
7 where such monies, loans, debts incurred, obligations incurred,
8 property in-kind, or commercial or professional services have been
9 solicited or otherwise consented to by such committee or have been
10 expended or employed in a manner or amount directed, authorized,
11 either expressly, by implication, or consented to by such committee.

12 2. Contributions of property, including the use thereof, and contributions
13 of commercial or professional services shall be attributed a cash value
14 equal to their fair market value.

15 3. Notwithstanding the foregoing, none of the following shall be
16 considered a contribution: a candidate's own services and property,
17 other than cash; the use of a dwelling unit and residential premises
18 incidental thereto for any campaign purpose and the provision of
19 refreshments and entertainment in connection with such use; the
20 services of the person who is performing the duties of the candidate's
21 treasurer; and the use of vehicles for any campaign purpose other than
22 in connection with the performance of a commercial or professional
23 service.

24 4. The payment or waiver of legal fees to advise a candidate on
25 compliance with campaign laws or regulations, and payment or waiver
26 of legal fees or court costs to represent a candidate or candidate
27 committee in any action reasonably related to the campaign or election
28 in which the candidate or committee has been named as a defendant,
29 are contributions that must be disclosed, but are not subject to any
30 contribution limits in the Charter.

31 (i) "Coordinated Expenditure" means an expenditure that is made:
32 a. by a person other than the candidate or campaign committee;
33 b. at the request or suggestion of, or in cooperation, consultation or

- 1 concert with, a candidate, campaign committee or political party or
2 any agent or representative of a candidate, campaign committee or
3 political party; and
4 c. for the purpose of:
5 i. supporting or opposing the nomination or election of a
6 candidate; or
7 ii. paying for an advertisement that refers to a clearly identified
8 candidate and is published and disseminated to the relevant
9 electorate in New Mexico within thirty days before the primary
10 election or sixty days before the general election in which the
11 candidate is on the ballot.
- 12 (j) "Covered Office" means the office of Mayor of the City of Albuquerque or
13 the office of any City Councilor.
- 14 (k) "Disclaimer" means a notice that identifies the person(s) or organization(s)
15 who paid for a communication and whether the communication was
16 authorized by one or more candidates.
- 17 (l) "Disclosure reports" means statements filed by candidates and
18 committees in the electronic campaign finance reporting system as
19 required pursuant to Article XIII, Section 4.
- 20 (m) "Early Voter" means a voter who votes in person before election day, and
21 has not been issued an absentee ballot at the time the voter presents
22 himself at an early voting location.
- 23 (n) "Election" means any City of Albuquerque municipal election.
- 24 (o) "Electioneering Communication" means any audio or visual
25 communication in any form that is broadcast or distributed by any means
26 that:
27 (1) unambiguously refers to any candidate or ballot measure;
28 (2) is broadcast, printed, mailed, delivered, or distributed within the 60 days
29 preceding a regular or special election, or 45 days preceding a runoff
30 election; and
31 (3) is broadcast to, printed in a newspaper, distributed to, mailed to,
32 delivered by hand or otherwise distributed to an audience that includes
33 members of the electorate for a covered office.

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- 1 (p) "Express Advocacy" means an expenditure made by a person or group,
2 other than a candidate or candidate's committee, that advocates the
3 election or defeat of a candidate or ballot measure, including all costs of
4 designing, producing, or disseminating a communication that contains
5 phrases such as "vote for", "re-elect", "support", "cast your ballot for",
6 "[name of candidate] for [name of office]", "[name of candidate] in [year]",
7 "vote against", "defeat", "reject", or similar phrases, or other explicit
8 references to a candidate or ballot measure that indicates intent to
9 influence an election.
- 10 (q) "Expenditure" means the payment or furnishing of money or anything of
11 value or the incurring or repayment of indebtedness or obligation, by or on
12 behalf of any person, candidate or political committee in consideration for
13 any services, supplies, equipment or other thing of value performed or
14 furnished for any reason, including support of or opposition to a candidate
15 or political committee or for reducing the debt of a candidate or political
16 committee. Notwithstanding any other provision of the Charter, for the
17 purposes of Election Code and the Open and Ethical Elections Code, the
18 payment of legal fees to advise a candidate on compliance with campaign
19 laws or regulations, and the payment of legal fees or court costs to
20 represent a candidate or candidate committee in any action reasonably
21 related to the campaign or election in which the candidate or committee
22 has been named as a defendant, are expenditures that must be disclosed,
23 but are not subject to any expenditure limits in the Charter.
- 24 (r) "Immediate Family" means the candidate's spouse, parent, grandparent,
25 child, grandchild, sister, half-sister, brother, half-brother, stepparent, step-
26 grandparent, stepchild, step-grandchild, stepsister, stepbrother, mother-in-
27 law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law,
28 guardian, former guardian, domestic partner, and the immediate family of
29 the candidate's spouse or domestic partner.
- 30 (s) "Independent Expenditure" mean any funds spent on express advocacy or
31 electioneering communications that are made without the cooperation,
32 consultation or coordination with, or at the request or suggestion of, a
33 candidate, a candidate's authorized committee or an agent thereof. An

1 independent expenditure may include materials already distributed to the
2 public or broadcast by a candidate, the candidates authorized committee or
3 an agent thereof.

4 (t) "Mass Communications" means any communication of substantially
5 identical content reasonably expected to reach 100 or more individuals
6 within three (3) months of a regular or special election, or within 45 days of
7 a runoff election. This includes communications sent directly to
8 individuals, and communications placed or posted where they will likely be
9 seen by 100 or more individuals, such as signs.

10 (u) "Measure" means any proposition submitted to a popular vote at an
11 election, whether by initiative, referendum or recall procedure or otherwise.

12 (v) "Measure Finance Committee" means a political committee or any person
13 or combination of two or more persons acting jointly in aid of or in
14 opposition to the effort of anyone seeking to have their name placed on the
15 ballot for city office, a petition to place a measure on the ballot pursuant to
16 Article III of this Charter, voter approval or disapproval of one or more
17 measures on the ballot and/or the election to, or recall from, office of one
18 or more candidates for office when such person or people have accepted
19 contributions in excess of \$250 or make expenditures in excess of \$250 for
20 any of the purposes listed heretofore.

21 (w) "Person" means any individual, cooperative association, club, corporation,
22 company, firm, partnership, joint venture syndicate, profit or nonprofit
23 organization, or other entity.

24 (x) "In-Kind Contribution" means a good or service, other than money, having
25 monetary value not to exceed the limits set in Section 4 of Article XIII, but
26 not including an individual who volunteers his own personal service.
27 Professional services, including legal services, accounting services,
28 consulting services and similar services provided directly from the
29 professional to the Candidate are permitted, provided no single In-Kind
30 Contributor exceeds the limits set in Section 4 of Article XIII.

31 Notwithstanding the foregoing, a Candidate may accept unlimited In-Kind
32 Contributions in the following areas:

33 (1) legal services provided directly from attorneys for the purpose of

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- 1 providing legal advice to comply with election laws and public financing
- 2 laws,
- 3 (2) professional services provided directly from the professional, including
- 4 attorneys, experts and consultants, for the sole purpose of participating
- 5 in a proceeding under Section 8 of the Code of Ethics, Section 10 of the
- 6 Election Code, and Sections 20 and 21 of the Open and Ethical Elections
- 7 Code, and
- 8 (3) office space.

9 Such In-Kind Contributions shall be reported on the next statement filed
10 with the Clerk or within 30 days of receiving the goods or services.

- 11 (y) "Reporting individual" means every public official, candidate or treasurer
- 12 of a campaign committee and every treasurer of a measure finance
- 13 committee.

14 **Section 3. CANDIDATE DISCLOSURE.**

15 Each candidate shall file a financial disclosure with the City Clerk setting forth
16 a listing of the candidate's membership's and positions, if any, in professional
17 organizations, and any source of income that accounts for 5% or more of the
18 candidate's total income, and any known present business relationships the
19 candidate has or may have with the city, and any and all real estate interests
20 held by the candidate within Bernalillo County, excluding the candidates'
21 home. The candidate disclosure shall be filed with the City Clerk when the
22 candidate becomes a declared candidate, be on a form prescribed by the City
23 Clerk, and shall be sworn and attested to under penalty of perjury by the
24 Candidate.

25 **Section 4. CAMPAIGN FINANCING.**

- 26 (a) *One Candidate Finance Committee.* Each candidate shall establish no more
- 27 than one Candidate Finance Committee and shall appoint a treasurer who
- 28 shall not be the candidate.
- 29 (b) *One Bank Account Filing Requirements.*
 - 30 1. Each candidate or the candidate's treasurer and each Measure Finance
 - 31 Committee shall establish one and only one campaign bank checking
 - 32 account for each election. The City Clerk shall issue a form to be
 - 33 submitted by campaigns and committees disclosing bank account

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- 1 information.
- 2 2. All contributions of monies received for the benefit of the candidate's
- 3 campaign or the Measure Finance Committee shall be deposited in that
- 4 account, and all disbursements shall be made from that account.
- 5 3. Each candidate and each Measure Finance Committee shall file with the
- 6 bank at which the campaign checking account has been established a
- 7 letter authorizing the release of information concerning that account to
- 8 the Clerk and shall submit a copy of the letter of authorization to the
- 9 Board. Upon the request of the Clerk, each candidate, the candidate's
- 10 treasurer, or the chairperson or treasurer of each Measure Finance
- 11 Committee shall provide to the Clerk all bank records, cancelled checks,
- 12 and any other financial information relating to the campaign as may be
- 13 requested by the Clerk.

14 (c) *Disclosure of Campaign Financing.*

- 15 1. Each candidate for the office of Mayor or Councilor and each Measure
- 16 Finance Committee, shall file with the City Clerk the statements required
- 17 in Section 4(c)2 of this Election Code, each of which shall be
- 18 cumulative, signed under oath by the candidate or the candidate's
- 19 treasurer or by the chairperson or treasurer of the Measure Finance
- 20 Committee, setting forth through 5:00 p.m. of the day preceding the
- 21 filing of each statement:
 - 22 A. The total of all contributions, which shall include all contributions
 - 23 received, regardless of whether the contribution has been
 - 24 deposited in the candidate's or Measure Finance Committee's
 - 25 campaign bank account. A contribution is deemed received when
 - 26 a candidate or a Measure Finance Committee or any agent of a
 - 27 candidate or a Measure Finance Committee receives a
 - 28 contribution or the benefit of the services donated.
 - 29 B. When the contributor is an individual, the name and address of
 - 30 the contributor, the contributor's principal business or
 - 31 occupation, the name and address of the contributor's employer,
 - 32 if self-employed, the address of the contributor's business, and
 - 33 the nature of the contributor's or the contributor's employer's

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business. If the contributor is retired or not employed, the residential address of the contributor shall be disclosed. When the contributor is an entity other than an individual, the name and address of the contributor, the business or activities conducted by the contributor and the owners and managers of the contributor. The amount of each contribution and the cumulative value of all contributions contributed by the contributor shall be disclosed. Measure Finance Committees that support or oppose more than one candidate or measure shall specify in separate sections in each disclosure statement the candidate or measure to which each contribution and expenditure applies. In the event a contribution or expenditure applies to more than one candidate or measure, the pro rata share of such contribution or expenditure shall be clearly identified for each candidate or measure.

- C. All expenditures made on behalf of the campaign, including any reimbursements and the nature thereof, and the name and address of the person or business to which payment was made.
 - (A) Reporting of expenditures shall include for each expenditure including type and quantity of items purchased, names and roles of staff paid, names of companies and materials produced, etc.
 - (B) The Campaign and Election Auditor, as provided for in Article XIII, Section 9 shall, at their discretion, request additional details of expenditures or contributions.
- 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

1 to be on the ballot. Such approved nominating petition forms
2 shall state the name of the person and the city office for which
3 such person is petitioning to qualify to be on the ballot. People
4 who have sought to be on the ballot as described above, but who
5 do not qualify for the ballot or do not file a declaration of
6 candidacy are required to file as provided in this section by 5:00
7 p.m. on the second Monday in May, a report of all expenditures
8 made and contributions received on or before the first Monday in
9 May and not previously reported and to file a final report by 5:00
10 p.m. on the second Monday in November, a report of all
11 expenditures made and contributions received on or before the
12 first Monday in November and not previously reported.

13 E. Within 48 hours of the receipt of a statement listing campaign
14 contributors, or as soon thereafter as reasonably possible, the
15 Purchasing Office shall determine if any contributor has business
16 dealings with the city. For the purposes of this section, a person
17 is deemed to have business dealings if the person or in the case
18 of an individual, the contributor's principal business or the
19 contributor's employer has received \$20,000 or more pursuant to
20 a contract with the city in the 24 months prior to the date of
21 contribution. The Purchasing Office shall immediately notify the
22 City Clerk of any campaign contributors who have business
23 dealings with the city and the City Clerk shall post that
24 information (including: contribution amount, recipient and
25 business relationship) on the city's website.

26 F. The Purchasing Office shall maintain a list of all contributors to
27 the campaign of any elected Mayor or Councilor and, for a period
28 of one and one-half years following the election of that Official,
29 shall notify the City Clerk of any campaign contributors who form
30 business dealings with the city, as defined in the preceding
31 paragraph, and the City Clerk shall post that information
32 (including: contribution amount, recipient and business
33 relationship) on the city's website.

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1 G. In addition to other campaign disclosure requirements of the
2 Election Code, a candidate shall designate in his or her
3 disclosure reports those contributors who have contracts
4 pursuant to which they receive funds from the employer of the
5 candidate if the candidate was solely or partially responsible for
6 the recommendation or award of the contract or for the
7 administration of the contract. The City Clerk shall post this
8 designation separately from the other contributions on the city's
9 website.

10 2. The statements required by this subsection shall be filed as follows:

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

19 B. In an election year, instead of the biannual reports provided for in
20 Subsection A of this section, reporting individuals, except for
21 public officials who are not candidates in an election that year,
22 shall file reports of all expenditures made and contributions
23 received or, if applicable, statements of no activity, according to
24 the following schedule:

25 (A) by 5:00 p.m. on the second Monday in April, a report of all
26 expenditures made and contributions received on or
27 before the first Monday in April and not previously
28 reported;

29 (B) by 5:00 p.m. on the second Monday in May, a report of all
30 expenditures made and contributions received on or
31 before the first Monday in May and not previously
32 reported;

33 (C) by 5:00 p.m. on the second Monday in June, a report of all

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- expenditures made and contributions received on or before the first Monday in June and not previously reported;
- (D) by 5:00 p.m. on the second Monday in July, a report of all expenditures made and contributions received on or before the first Monday in July and not previously reported;
- (E) by 5:00 p.m. on the second Monday in August, a report of all expenditures made and contributions received on or before the first Monday in August and not previously reported;
- (F) by 5:00 p.m. on the second Monday in September, a report of all expenditures made and contributions received on or before the first Monday in September and not previously reported;
- (G) beginning on the second Monday in October, by 5:00 p.m. on every Monday thereafter before the regular election candidates shall file a report of all expenditures made and contributions received on or before the previous Friday and not previously reported;
- (H) beginning on the Friday before the regular election, any contribution or pledge to contribute that is for five hundred dollars (\$500) or more shall be reported to the City Clerk in a supplemental report on a prescribed form within twenty-four hours of receipt;
- (I) run-off candidates shall file statements as follows:
 - i. beginning on the first Monday following the regular election, by 5:00 p.m. on every Monday before the run-off election candidates shall file a report of all expenditures made and contributions received on or before the previous Friday and not previously reported; and
 - ii. beginning on the Friday before the run-off election,

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any contribution or pledge to contribute that is for five hundred dollars (\$500) or more shall be reported to the City Clerk in a supplemental report on a prescribed form within twenty-four hours of receipt;

(J) In the event of a special election, reporting individuals, except for public officials who are not candidates in the special election, shall file reports of all expenditures made and contributions received as follows:

- i. beginning on the first Monday following the County Clerk's first publication of the special election resolution, by 5:00 p.m. on every Monday before the special election reporting individuals shall file a report of all expenditures made and contributions received on or before the previous Friday and not previously reported; and
- ii. beginning on the Friday before the special election, any contribution or pledge to contribute that is for five hundred dollars (\$500) or more shall be reported to the City Clerk in a supplemental report on a prescribed form within twenty- four hours of receipt;

(K) by 5:00 p.m. on the thirtieth day after a regular, run-off, or special election, a report of all expenditures made and contributions received on or before the twenty-fifth day after the election and not previously reported.

C. If a candidate or public official has not received any contributions and has not made any expenditures since the candidate's or official's last report was filed with the proper filing officer, the candidate or official shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due and shall not be required to file a full report until the next required filing date

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occurring after an expenditure is made or a contribution is received.

- D. In an election year, a public official who is not a candidate shall file biannual reports of expenditures made and contributions received or statements of no activity in accordance with the schedule provided for in Subsection A of this section.
- E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.
- F. Except for candidates and public officials who file a statement of no activity, each reporting individual shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the reporting individual delivers a report to the City Clerk stating that:
 - (A) there are no outstanding campaign debts;
 - (B) all money has been expended in accordance with the provisions Section 4 of Article XIII, the Election Code;
 - (C) and the bank account has a zero balance.
- G. Each treasurer of a measure finance committee shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section until the treasurer files a report that affirms that the committee has dissolved or no longer exists and that its bank account has a zero balance.
- H. A reporting individual who is a candidate within the meaning of the Election Code because of the amount of contributions the candidate receives or expenditures the candidate makes and who does not ultimately file a declaration of candidacy or a nominating petition with the City Clerk and does not file a statement of no activity shall file biannual reports in accordance with Subsection A of this section.
- I. Reports required by this section shall be subscribed and sworn to

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by the candidate or the treasurer of the measure finance committee. A report filed electronically shall be electronically authenticated by the candidate or the treasurer of the measure finance committee using an electronic signature in conformance with the Uniform Electronic Transactions Act. For the purposes of Article XIII, Section 4, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the candidate or the treasurer of the political committee who was required to file the report.

- J. Reports required by this section shall be filed electronically by all reporting individuals.
- K. Reporting individuals may apply to the City Clerk for exemption from electronic filing in case of hardship, which shall be defined by the City Clerk.

(d) *Limits to Contributions.* No privately financed candidate shall, for any one election, allow total contributions, including in-kind contributions, from any one person with the exception of contributions from the candidate himself or herself of more than 5% of the annual salary for such office at the time of filing the Declaration of Candidacy rounded up to the nearest whole dollar amount. Limitations on contributions for publicly financed candidates are detailed in the Open and Ethical Elections Act.

(e) *Ban on Contributions from City Contractors.* No candidate for Mayor or Council, or Official who is a candidate for an office other than Mayor or Council, shall accept a contribution in support of the candidate's campaign from any person or entity, other than a City employee, who at the time of the contribution is in a contractual relationship with the City to provide goods or services to the City. Nor shall any candidate for Mayor or Council, or Official who is a candidate for an office other than Mayor or Council, accept a contribution that is knowingly given on behalf of any person or entity who, at the time of the contribution, is in a contractual relationship with the City to provide goods or services to the City. The remedy for an unknowing violation of this subsection shall be the return of the

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- 1 contribution.
- 2 (f) *Ban on Contributions from Foreign Nationals.* No candidate for Mayor or
- 3 Council, shall accept a contribution in support of the candidate's campaign
- 4 from any person or entity from a foreign national without lawful United
- 5 States permanent residence.
- 6 (g) *Unexpended Contributions.* Any contributions not expended on the
- 7 campaign shall be disposed of, such that the campaign account is brought
- 8 to a zero balance, at the option of the candidate or chairperson of a
- 9 Measure Finance Committee, by one of the following methods:
 - 10 (1) Retained in the campaign or Measure Finance Committee banking
 - 11 checking account for a possible runoff election for that office,
 - 12 (2) Returned to the person who made the contribution,
 - 13 (3) Placed in the City's General Fund, or
 - 14 (4) Given to a charity identified by the candidate.
- 15 The final campaign financing statement shall reflect the final disposition
- 16 of such contributions.
- 17 (h) *Anonymous Contributions.*
 - 18 (1) All anonymous contributions shall be disposed of by a candidate or
 - 19 the chairperson of a Measure Finance Committee either by placing
 - 20 the contribution in the City's General Fund or by giving the
 - 21 contribution to a charity.
 - 22 (2) An anonymous contribution shall not be considered to be a
 - 23 contribution to or expenditure of the campaign; however, a record of
 - 24 all anonymous contributions shall be kept by the candidate or the
 - 25 candidate's treasurer, or by the chairperson or treasurer of the
 - 26 Measure Finance Committee and the receipt and disposition of every
 - 27 anonymous contribution shall be reported in the campaign financing
 - 28 disclosure statements required by subsection (c) of this section are
 - 29 filed. Such report must disclose the goods, services, monies, or
 - 30 other contributions received, its value, the date of receipt and the
 - 31 date and method of disposition.
- 32 (i) For the purposes of this section, contributions and expenditures include
- 33 those contributions received and expenditures made by or on behalf of an

1 individual at any time prior to the individual filing a Declaration of
2 Candidacy for the office of Mayor or Councilor through the time the final
3 campaign financing disclosure statement is due, or by or on behalf of a
4 Measure Finance Committee at any time prior to the relevant election
5 through the time the final campaign financing disclosure statement is due.

6 (j) *Campaign Finance Records.*

7 (1) All campaign finance records and statements shall be open to
8 inspection and/or audit by the Board, its designated representative,
9 or its auditor; statements shall be presented to the Board for
10 inspection or audit, or both. The City Clerk shall create an electronic
11 data base for all campaign reporting required in this Election Code
12 and place that information on the City's web site.

13 (2) Campaign Financial Records.

14 A. Each candidate or the candidate's treasurer and each
15 chairperson or treasurer of a Measure Finance Committee
16 shall keep financial records of the campaign for a period of
17 one year following the date of election, to assure their
18 availability in the event of complaint or inquiry by the Board.
19 Such campaign financial records shall include records of all
20 contributions, regardless of amount, expenditures, cancelled
21 checks, invoices, receipts, bank statements, bills of sales,
22 statements of accounts, leases, rental agreements, and all
23 other financial records pertinent to the campaign.

24 B. In preparing and maintaining financial records, ledgers,
25 journals, or otherwise, and in recording contributions and
26 expenditures on the statements required by subsection (c) of
27 this section, each candidate or the candidate's treasurer and
28 each chairperson or treasurer of a Measure Finance
29 Committee shall:

30 1) Record in-kind contributions as both contributions and
31 expenditures equal to the fair market value of the goods
32 or services received.

33 2) Record campaign loans as contributions, with

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- 1 subsequent repayment of loans credited against
- 2 contributions.
- 3 3) Record returned contributions as credits against
- 4 contributions.
- 5 4) Record names of contributors on the bank deposit slips.
- 6 (3) During the election cycle, or within one year after the date of the
- 7 election, the Campaign and Election Auditor, as provided for in
- 8 Article XIII, Section 9 may request a candidate or committees'
- 9 campaign finance records so the Campaign and Election Auditor can
- 10 perform an additional audit on the campaign or committee. The
- 11 results of the audit will be submitted to the Board of Ethics and the
- 12 City Clerk.

13 (k) *Fund-Raising Activity.*

- 14 (1) The gross receipts of a fund-raising activity on behalf of a candidate
- 15 are considered to be campaign contributions, and all expenditures
- 16 associated with such a fund-raising activity are considered to be
- 17 campaign expenditures. As used in this subsection, the term "gross
- 18 receipts" includes all monies and donations of any kind which are
- 19 received as part of the fund-raising activity.
- 20 (2) The host of a fund-raising activity on behalf of a candidate or
- 21 Committee shall be responsible for reporting the contributions
- 22 resulting from the activity unless contributors are identified in the
- 23 required manner on the Disclosure of Campaign Financing
- 24 Statement, and the limits to contributions specified in subsection (d)
- 25 of this Section 4 shall apply as if the total contributions at the fund-
- 26 raising activity, not otherwise reported, were made by the host.
- 27 (l) *Measure Campaign Financing.* Any person or group which has contributed
- 28 in excess of thirty percent of the Mayor's salary to support or oppose a
- 29 measure or candidate shall have the name of such person or group
- 30 inserted into the name of the Measure Campaign Committee to which the
- 31 funds were contributed or shall create a new committee with the name of
- 32 the contributor in the committee name. It is the obligation of the Measure
- 33 Finance Committee to immediately inform the Clerk of the Committee's

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1 required name change by forming a new committee with the funds, or
2 updating the committee name with the City Clerk's Office and on the
3 campaign finance website; the Committee shall simultaneously report the
4 amount of the contribution which triggers the name change. For the
5 purposes of this subsection, "Mayor's salary" means the salary paid by the
6 City of Albuquerque as of the date of the contribution; support or oppose a
7 measure or candidate covers qualification for the ballot plus voter approval
8 or disapproval of a given measure.

9 Section 5. CAMPAIGN MATERIALS AND REQUIRED DISCLAIMERS.

10 (a) *Campaign Materials.*

11 Each candidate and each chairperson of each Measure Finance Committee
12 shall ensure that an image of all broadly distributed campaign material used in
13 the campaign is filed with the City Clerk's Office on or prior to the day the
14 financial report disclosing the expenditure for said campaign material is due.
15 Campaign materials shall be filed electronically in a manner prescribed by the
16 City Clerk. If the campaign material is a video or radio broadcast, a copy of the
17 video or radio broadcast shall be uploaded or a link to a copy of the video or
18 radio broadcast shall be sent directly to the City Clerk and the Independent
19 Auditor.

20 (b) *Required Disclaimers.*

21 Each candidate and each chairperson of each Measure Finance Committee
22 shall ensure that all campaign materials display a clear and conspicuous
23 disclaimer stating information on how the material was paid and any
24 additional information as required by the rules promulgated by the City Clerk.

25 Section 6. MEASURE FINANCE COMMITTEES.

26 (a) Each Measure Finance Committee shall register with the City Clerk within
27 five days of formation by preparing and filing a statement, signed by the
28 chairperson of the Committee, setting forth:

- 29 1. The exact name of the Committee;
- 30 2. The official address and phone number of the Committee;
- 31 3. The names of the officials of the Committee;
- 32 4. The purpose of the MFC including the measure(s) or candidate(s)
33 supported or opposed by the MFC; and

1 5. Acknowledgement of understanding of the Election Code, the Board's
2 Rules and Regulations, and the disclosure requirements for financial
3 statements.

4 (b) It is recognized that an affirmative duty rests on the officials of any such
5 Measure Finance Committee to be aware of the provisions of this Election
6 Code, and nothing contained in this Section shall exempt a Measure
7 Finance Committee from filing its statement of formation or existence as
8 required herein at the earliest possible date. Failure to so file according to
9 the provisions of subsection (a) of this section shall subject the Committee
10 to a fine not to exceed the maximum amount authorized by state law or
11 public reprimand or both as provided in the Board's Rules and Regulations.
12 Accordingly, such officials are enjoined to prepare and file the statement
13 specified in subsection (a) of this section without such a request from the
14 Board.

15 (c) A Measure Finance Committee's registration shall expire each year on
16 December 31st. A Measure Finance Committee shall renew its registration
17 with the City Clerk upon expiration or within five days of any contribution
18 collection or expenditure by the Measure Finance Committee that is in
19 excess of \$250. At the time a Measure Finance Committee renews its
20 registration, it shall review the information that is on file with the City Clerk
21 in accordance with subsection (a) of this section and shall revise that
22 information if any changes have occurred since the prior registration.

23 Section 7. FAMILIARITY WITH ELECTION CODE AND RULES AND
24 REGULATIONS.

25 The Board and Clerk shall make available electronically on its website, or
26 physically by request, copies of the Board's Rules and Regulations, the
27 Clerk's Rules and Regulations, and the City Charter of Albuquerque, revised to
28 date, and require that each registered candidate and each registered Measure
29 Finance Committee acknowledge in writing on a prescribed form familiarity
30 with the terms of this Election Code, the Clerk's Rules and Regulations, and
31 the Board's Rules and Regulations. Each candidate and chairperson of a
32 Measure Finance Committee shall acknowledge understanding of the Election
33 Code, the Clerk's Rules and Regulations, and the City Charter, and

1 acknowledge responsibility for the campaign or committee. Each candidate
2 and chairperson shall furnish an address and phone number at which the
3 candidate or chairperson can be reached, and to which communications,
4 including notifications of alleged violations or hearings, can be mailed or
5 delivered, and agreeing that notice left at such address shall be deemed
6 received by the candidate or chairperson.

7 Section 8. PRESERVATION OF RECORDS.

8 (a) The records and statements required by this Election Code shall be
9 preserved intact as public records by the Board for a period of at least seven
10 years after the election in question.

11 (b) All records of the Board in the conduct of its business, including minutes
12 of meetings and recommendations to the City Council and Mayor, shall be
13 preserved intact as permanent public records by the Board.

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

16 (a) The Board and City Clerk shall promulgate reasonable Rules and
17 Regulations for their conduct and in aid of interpretation and enforcement
18 of this Election Code, and amend such Rules and Regulations as they may,
19 from time to time, deem advisable; provided, that amendments to said
20 Rules and Regulations shall not be made by the Board or City Clerk during
21 the ninety days preceding an election. The current Rules and Regulations
22 of the Board and City Clerk shall be made available in published form no
23 later than sixty days prior to any election.

24 (b) There is hereby created the position of Campaign and Election Auditor. The
25 Auditor shall be a Certified Public Accountant, a Registered Public
26 Accountant, Certified Internal Auditor, or have other qualified campaign
27 finance experience.

28 Section 10. ENFORCEMENT.

29 (a) *Charges of Violations.*

30 1. The City Clerk shall issue Rules and Regulations regarding the
31 requirements for complaints and the process by which facial sufficiency
32 of the complaint is determined.

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- 1 2. Any charge or charges that a candidate or the chairperson of a Measure
2 Finance Committee or any other group has committed a violation of this
3 Election Code or of the Rules and Regulations promulgated by the
4 Board or the City Clerk shall be made in writing, notarized and brought
5 before the City Clerk, pursuant to Rules and Regulations issued by the
6 City Clerk pursuant to this Section.
- 7 3. If the City Clerk determines that the complaint meets the requirements
8 in the Rules and Regulations issued by the City Clerk pursuant to this
9 Section, the City Clerk shall refer the complaint to the Board.
- 10 4. Except as provided in subsection (c) of this section, the Board shall
11 give written notice of such charge or charges to the candidate or
12 chairperson before taking further action.
- 13 (b) Notwithstanding any other provision in this section, the Board and/or the
14 City Clerk may, on their own initiative, initiate a charge or charges that a
15 candidate or the chairperson of a Measure Finance Committee or any other
16 group has committed a violation of this Election Code, the Open and
17 Ethical Election Code, or of the Rules and Regulations promulgated by the
18 Board or the City Clerk. In the event that inspection and/or audit of the
19 candidates or Measure Finance Committees campaign financial records
20 made pursuant to Section 4(j)3 results in a charge or charges against a
21 candidate or Measure Finance Committee, written notice to the candidate or
22 chairperson of the charge or charges shall not be required before the
23 Board takes further action.
- 24 (c) Should the Board find, after due hearing, that a violation of this Election
25 Code or the Rules and Regulations of the Board has occurred, it may, for
26 each violation, issue a public reprimand or impose a fine not to exceed the
27 maximum amount authorized by state law, or do both.
- 28 (d) *Automatic Fines.* Notwithstanding subsection (d) of this section, a failure to
29 file or late filing shall subject the candidate or the chairperson of the
30 Measure Finance Committee or any other obligated person, whichever may
31 be the case, to an automatic fine and public reprimand according to the
32 schedules established in the Rules and Regulations of the Board. In
33 situations where there is an incomplete filing the candidate or the

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1 chairperson of the Measure Finance Committee shall be notified of the
2 failure and shall have ten days from the date of notice to correct the failure.
3 If the incomplete filing is not corrected within ten days there shall be an
4 automatic fine and public reprimand. If the failure is corrected within ten
5 days and the Board determines from the face of the filings that any failure
6 appears to have been inadvertent and made in good faith, the Board shall
7 find that there has been no violation.

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

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

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

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

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

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

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

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

16 Section 11. NON-WAIVER OF PENALTIES.
17 Nothing herein set forth shall be construed to affect or otherwise diminish any
18 penalties otherwise provided by law for violation of this Election Code or the
19 Rules and Regulations promulgated by the Board or the Clerk, nor shall
20 anything herein set forth prevent the Board from bringing to the attention of
21 the proper authority any alleged violation coming to its attention which may be
22 subject to other penalties.

23 Section 12. AMENDMENTS.
24 This Election Code may be amended without requiring compliance with Article
25 VI of this Charter by ordinance adopted by a majority plus two of the entire
26 membership of the Council voting in favor of such amendment or
27 amendments, and said ordinance being otherwise governed by Article XI of
28 this Charter.”

29 SECTION 5. Article XVI of the City Charter shall be amended as follows and the
30 sections and subsection shall be renumbered accordingly:

31 “Section 1. CITATION.
32 Sections 1 through 21 of this article may be cited as the "Open and Ethical
33 Elections Code”.

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1 Section 2. LEGISLATIVE INTENT.

2 The intent of the Open and Ethical Elections Code is to:

- 3 (A) Avoid both actual undue influence of large campaign donors and the
4 appearance of undue influence in Council and Mayoral elections and decision-
5 making;
- 6 (B) Diminish the public perception of corruption and strengthen public
7 confidence in the governmental and election process;
- 8 (C) Provide well-qualified candidates with adequate funding to mount
9 campaigns to encourage competitive Council and Mayoral elections so that
10 the City's residents have more choices about the leadership and direction of
11 the City;
- 12 (D) Increase the accountability of elected officials to their constituents who
13 elect them, as opposed to the contributors who fund their campaigns; and
- 14 (E) Insure that the City's Council and Mayoral election process is fair,
15 responsible and ethical.

16 Section 3. DEFINITIONS.

17 As used in the Open and Ethical Elections Code:

- 18 (A) APPLICANT CANDIDATE. A candidate, but not a write-in candidate, running
19 for a Covered Office and who is seeking to be a Participating Candidate.
- 20 (B) APPLICABLE SPENDING LIMIT. The total amount a candidate may spend
21 on a campaign as determined by the City Clerk's Office. For a City
22 Councilor, this amount is based on the number of registered voters in the
23 district the candidate is running in. For the Mayor, this amount is
24 determined by the number of registered voters in the City of Albuquerque.
25 For a participating candidate, the applicable spending limit is the amount
26 set for distribution from the Fund. Any seed money collected by an
27 applicant candidate will be subtracted from the distribution from the Fund.
- 28 (C) CLERK. The City Clerk.
- 29 (D) CONTESTED ELECTION. A regular municipal election in which there is
30 more than one candidate for a City Council or Mayor position.
- 31 (E) COORDINATED EXPENDITURE. Any expenditure made with the
32 cooperation, consultation or coordination with, or at the request or
33 suggestion of, a candidate, a candidate's authorized committee or an agent

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1 thereof. Any expenditure that is coordinated within the meaning of this
2 paragraph is an In-Kind Contribution to the candidate or candidate's
3 committee with whom or with which it was coordinated and the candidate
4 must report the Coordinated Expenditure as an In-Kind Contribution.

5 (F) COVERED OFFICE. City Council or Mayor.

6 (G) ELECTIONEERING COMMUNICATION. Any communication broadcasted by
7 television or radio, printed in a newspaper or on a billboard, directly mailed
8 or delivered by hand to personal residences or otherwise distributed that:

9 (1) unambiguously refers to any candidate; and

10 (2) is broadcasted, printed, mailed, delivered or distributed within
11 thirty days before a regular municipal election; and

12 (3) is broadcasted to, printed in a newspaper distributed to, mailed
13 to, delivered by hand to or otherwise distributed to an audience
14 that includes members of the electorate for a Covered Office.

15 (4) ELECTIONEERING COMMUNICATION does not include:

16 (A) any news articles, editorial endorsements, opinion or
17 commentary, writings or letters to the editor printed in a
18 newspaper, magazine or other periodical not owned or
19 controlled by a candidate or political party;

20 (B) any editorial endorsements or opinions aired by a
21 broadcast facility not owned or controlled by a candidate
22 or political party;

23 (C) any communication by Persons made in the regular
24 course and scope of their business or any communication
25 made by a membership organization solely to members of
26 such organization and their families; or

27 (D) paid for by a candidate or candidate's campaign
28 committee.

29 (H) EXPENDITURE. The payment or furnishing of money or anything of value
30 or the incurring or repayment of indebtedness or obligation, by or on
31 behalf of any Person, candidate or political committee in consideration for
32 any services, supplies, equipment or other thing of value performed or
33 furnished for any reason, including support of or opposition to a candidate,

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1 political committee or measure for or for reducing the debt of a
2 Participating Candidate for nomination or election to a Covered Office.

3 (I) EXPLORATORY PERIOD.

4 (1) For Mayoral Applicant Candidates, the exploratory period begins at 246
5 days before the election, and ends 200 days before the election; and

6 (2) For Council Applicant Candidates, the exploratory period begins 191
7 days before the election, and ends 156 days before the election.

8 (J) EXPRESS ADVOCACY. An Expenditure made by a Person or group, other
9 than a candidate or a candidate's committee, that advocates the election or
10 defeat of a candidate, including all costs of designing, producing or
11 disseminating a communication that contains phrases such as "vote for",
12 "re-elect", "support", "cast your ballot for", "[name of candidate] for [name
13 of office]", "[name of candidate] in [year]", "vote against", "defeat",
14 "reject" or similar phrases.

15 (K) FUND. The Open and Ethical Elections Fund.

16 (L) IMMEDIATE FAMILY. The candidate's spouse, parent, grandparent, child,
17 grandchild, sister, half-sister, brother, half-brother, stepparent, step-
18 grandparent, stepchild, step-grandchild, stepsister, stepbrother, mother-in-
19 law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law,
20 guardian, former guardian, domestic partner, the Immediate Family of the
21 candidate's spouse or domestic partner.

22 (M) INDEPENDENT EXPENDITURE. Any funds spent on Express Advocacy or
23 Electioneering Communications that are not coordinated with any
24 candidate's campaign. The Clerk shall adopt regulations to determine
25 whether funds spent on Express Advocacy or Electioneering
26 Communications are coordinated Expenditures. Coordinated Expenditures
27 on Express Advocacy or Electioneering Communications are treated as
28 contributions.

29 (N) IN-KIND CONTRIBUTION. A good or service, other than money, having
30 monetary value not to exceed more than \$2,500.00, but not including an
31 individual who volunteers his own personal service. Professional services,
32 including legal services, accounting services, consulting services and
33 similar services provided directly from the professional to the Applicant

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1 Candidate or Participating Candidate are permitted, provided no single In-
2 Kind Contributor exceeds the \$2,500.00 limitation herein and provided the
3 total value of all In-Kind Contributions does not exceed 10% of the
4 applicable spending limit per regular or run-off election. Notwithstanding
5 the foregoing, an Applicant Candidate or Participating Candidate may
6 accept unlimited In-Kind Contributions in the following areas: 1) legal
7 services provided directly from attorneys for the purpose of providing legal
8 advice to comply with election laws and public financing laws. 2)
9 professional services provided directly from the professional, including
10 attorneys, experts and consultants, for the sole purpose of participating in
11 a proceeding under the Code of Ethics, the Election Code, the Open and
12 Ethical Elections Code, or the rules and regulations of the Board of Ethics
13 and/or City Clerk, and 3) office space. Such In-Kind Contributions shall be
14 reported as required by Article XIII, Section 4.

15 (O)NONPARTICIPATING CANDIDATE. A candidate running for a Covered Office
16 who does not choose to participate in the Open and Ethical Elections Code
17 or a candidate running for a Covered Office who declares an intent to
18 participate in the Open and Ethical Elections Code, but who fails to become
19 a Participating Candidate.

20 (P) OPPOSING FUNDS. Funds spent opposing a Participating Candidate. The
21 amount of Opposing Funds is calculated by determining the opponent of
22 the Participating Candidate who has the highest total of Expenditures and
23 supportive Independent Expenditures; the amount of Opposing Funds is
24 calculated by totaling the Expenditures made by that opponent, the amount
25 spent on Independent Expenditures in support of that opponent and the
26 amount spent on Independent Expenditures in opposition to the
27 Participating Candidate. No Independent Expenditure may be counted as
28 both opposing a Participating Candidate and in support of that candidate's
29 opponent.

30 (Q)PARTICIPATING CANDIDATE. A candidate running for a Covered Office
31 who chooses to obtain financing pursuant to the Open and Ethical
32 Elections Code and who is certified to participate as an Open and Ethical
33 Elections Code Candidate.

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- 1 (R) PERSON.
- 2 a. a City resident;
- 3 b. a labor organization, club, association or organization who have
- 4 members who are City residents; or
- 5 c. a corporation, limited liability company, firm, partnership, joint stock
- 6 company or other entity conducting business in the City.
- 7 (S) QUALIFYING CONTRIBUTION. A non-refundable donation of \$5.00 in the
- 8 form of cash, check, debit card, credit card or money order payable to the
- 9 Fund in support of an Applicant Candidate that:
- 10 a. for the Mayoral race is made by a registered City voter and for a
- 11 Council race is made by a registered City voter residing in the district
- 12 in which the Applicant Candidate desires to represent;
- 13 b. Is made during the designated Qualifying Period and obtained
- 14 through efforts made with the knowledge and approval of the
- 15 Applicant Candidate;
- 16 c. is acknowledged by a receipt that identifies the contributor's name;
- 17 and
- 18 d. identifies which Applicant Candidate the City resident supports.
- 19 (T) QUALIFYING PERIOD.
- 20 a. For Mayoral Applicant Candidates the Qualifying Period begins 8:00
- 21 a.m. 199 days before the election, and ends 5:00 p.m. 136 days before
- 22 the election; and
- 23 b. For Council Applicant Candidates, the Qualifying Period begins 8:00
- 24 a.m. 155 days before the election, and ends 5:00 p.m. 120 days
- 25 before the election.
- 26 (U) REGULAR LOCAL ELECTION. An election that is held the first Tuesday
- 27 after the first Monday in November in odd numbered years.
- 28 (V) SEED MONEY. A contribution in support of an Applicant Candidate of no
- 29 more than \$250.00 per Person, except for the Applicant Candidate who can
- 30 contribute up to \$2,500.00, raised for the primary purpose of enabling
- 31 Applicant Candidates to collect Qualifying Contributions and petition
- 32 signatures the aggregate amount of which may not exceed 20% of the
- 33 applicable spending limit. Seed Money may only be accepted during the

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1 Exploratory Period and the Qualifying Period. Seed Money contributed by
2 the candidate to their own campaign may be donated prior to the
3 exploratory period, or during the exploratory or qualifying period.

4 (W) ELECTION CYCLE. The period beginning on the day after the regular
5 or run-off election for any municipal office and ending on the day of the
6 next regular election for that office.

7 (X) CANDIDATE. "Candidate" has the same definition that is provided in Article
8 XIII, Section 2 of the Election Code, with the addition that "Candidate" also
9 includes any individual who has filed a declaration of intent to seek public
10 financing.

11 Section 4. TERMS OF PARTICIPATION - DECLARATION OF INTENT.

12 (a) An Applicant Candidate, choosing to obtain financing pursuant to the Open
13 and Ethical Elections Code, shall file a declaration of intent with the Clerk
14 to participate as an Applicant Candidate for a Covered Office. The
15 declaration of intent shall be filed with the Clerk prior to or during the
16 Qualifying Period according to forms and procedures developed by the
17 Clerk.

18 (b) An Applicant Candidate shall submit a declaration of intent prior to
19 collecting any Qualifying Contributions and make explicit in the declaration
20 of intent that the Applicant Candidate has complied with and will continue
21 to comply with the Open and Ethical Code's contribution and Expenditure
22 limits and all other requirements set forth in the Open and Ethical Elections
23 Code.

24 (c) The declaration of intent shall specify that the Applicant Candidate agrees
25 that any money received from the Fund shall not be used to retire a prior
26 campaign debt from a previous election period.

27 The declaration of intent shall specify that the Applicant Candidate has not,
28 within one year prior to the declaration, raised or expended any monies in
29 excess of the pre- and post- Exploratory Period contribution limitations
30 with the intent or effect of campaigning for any elected office. Any
31 Applicant Candidate who has, within one year before filing the declaration,
32 raised or expended any monies in excess of the pre- and post-Exploratory
33 Period contribution limitations with the purpose or effect of campaigning

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1 for elected office, shall be disqualified from receiving funds under this
2 Code.

3 **Section 5. QUALIFYING CONTRIBUTIONS.**

- 4 (a) An Applicant Candidate for Mayor shall obtain Qualifying Contributions
5 from a minimum of 1% of registered City voters.
- 6 (b) An Applicant Candidate for Council shall obtain Qualifying
7 Contributions from a minimum of 1% of the City voters registered in the
8 district that the Applicant Candidate desires to represent.
- 9 (c) No payment, gift or anything of value shall be given in exchange for a
10 Qualifying Contribution.
- 11 (d) Audit.
 - 12 (1) The Office of Internal Audit shall conduct audits on a percentage of
13 qualifying contributions submitted to the City Clerk's Office
14 throughout the qualifying period.
 - 15 (2) Prior to the start of the exploratory period, the City Auditor shall
16 develop an audit plan for the conduct of the audit for the election
17 cycle. The City Auditor shall confer with the City Clerk's Office in
18 regards to resources that may be required of that office.
 - 19 (3) At the completion of every audit, written reports shall be submitted
20 to the Board and the City Clerk's Office and shall be made available
21 for public inspection.

22 **Section 6. SEED MONEY AND IN-KIND CONTRIBUTIONS.**

- 23 (a) An Applicant Candidate may accept Seed Money not to exceed \$250.00
24 per Person.
- 25 (b) An Applicant Candidate may contribute up to \$2,500.00 from the
26 Applicant Candidate's personal funds for Seed Money.
- 27 (c) Seed Money shall be deducted from the revenues distributed to the
28 Participating Candidate from the Fund.
- 29 (d) The aggregate amount of Seed Money received and spent by an
30 Applicant Candidate shall not exceed an amount equal to 20% of the
31 distribution from the Fund, or the Applicable Spending Limit to a
32 Participating Candidate.
- 33 (e) An Applicant Candidate or Participating Candidate may accept In-Kind

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1 Contributions from the beginning of the Exploratory Period up to the
2 regular municipal election, or, in the event that a Participating Candidate
3 is in a run-off, up to the run-off election. The value of any In-Kind
4 Contribution shall not count against the applicable limit on Seed Money
5 contributions. The aggregate amount of In-Kind Contributions received
6 by an Applicant Candidate shall not exceed an amount equal to 10% of
7 the applicable spending limit.

8 (f) Volunteer work-hours are non-reportable and shall not count as In-Kind
9 Contributions or against the applicable limit on Seed Money. An
10 individual may volunteer personal services to an Applicant Candidate as
11 long as the volunteer is not compensated. If an individual volunteers
12 during working hours, paid by a third-party employer or the Applicant
13 Candidate, then that employer makes an In-Kind Contribution to the
14 Applicant Candidate.

15 (g) If a Participating Candidate is defeated or is elected, any unspent Seed
16 Money shall be forfeited to the Fund.

17 (h) Mayoral Applicant Candidates may accept Seed Money from 246 days
18 before the election through 136 days before the election. Council
19 Candidates may accept Seed Money from 191 days before the election
20 through 120 days before the election.

21 (1) In the event that a Candidate's certification for public financing or
22 qualification by the County Clerk as a Candidate has been
23 challenged, the Candidate may continue to accept seed money
24 until the City Clerk provides the Candidate with notice that the
25 certification or qualification by the County Clerk as a Candidate
26 has been upheld.

27 Section 7. CERTIFICATION OF PARTICIPATION.

28 (A) Within twenty days of a final submittal of Qualifying Contributions by an
29 Applicant Candidate, the Clerk shall determine whether the Applicant
30 Candidate has:

- 31 (1) signed and filed a declaration of intent to obtain fund revenue;
- 32 (2) submitted the appropriate number of Qualifying Contributions;
- 33 (3) qualified as a candidate pursuant to other applicable City and State

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- 1 election law;
- 2 (4) complied with Seed Money contribution and Expenditure
- 3 restrictions;
- 4 (5) otherwise met the requirements for obtaining financing pursuant to
- 5 the Open and Ethical Elections Code;
- 6 (6) otherwise met any additional criteria for certification set forth in
- 7 rules by the Clerk;
- 8 (7) been qualified as a Candidate by the County Clerk; and
- 9 (8) there are not pending challenges to the County Clerk's qualification
- 10 of the Candidate.
- 11 (B) The Clerk shall certify Applicant Candidates running for Mayor and
- 12 Council, complying with the requirements of this section, as Participating
- 13 Candidates twenty days after the last day of the Qualifying Period.
- 14 (C) A Participating Candidate shall comply with all requirements of the Open
- 15 and Ethical Elections Code and applicable City and state election law after
- 16 certification as a Participating Candidate and throughout the election cycle.
- 17 Section 8. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS TO
- 18 AND EXPENDITURES OF PARTICIPATING CANDIDATES.
- 19 (a) All money distributed to a Participating Candidate shall be used for that
- 20 Participating Candidate's campaign-related purposes in the election year in
- 21 which the money was distributed.
- 22 (b) A Participating Candidate shall limit total campaign Expenditures and
- 23 debts to the amount of money distributed to that Participating Candidate
- 24 from the Fund. A Participating Candidate shall not accept contributions or
- 25 loans from any other source.
- 26 (c) Within two weeks after the regular municipal election, a Participating
- 27 Candidate shall return to the Clerk for direct deposit into the Fund any
- 28 amount that is unspent or unencumbered by the date of the regular local
- 29 election.
- 30 (d) A Participating Candidate shall not use revenues from the Fund for
- 31 personal use including:
- 32 (1) salary or payment to an individual unless that individual is providing
- 33 bona fide services to the campaign and is compensated at fair

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- 1 market value;
- 2 (2) admission to a sporting event, concert, theater or other form of
- 3 entertainment unless part of a specific campaign activity;
- 4 (3) dues, fees, parking or gratuities at a country club, health club or
- 5 other recreational facility unless the costs are part of a specific
- 6 fundraising event;
- 7 (4) mortgage, rent or household utility payments for any part of a
- 8 personal residence;
- 9 (5) purchases of household food items or supplies; or
- 10 (6) purchase of clothing, other than items of de minimus value used in
- 11 the campaign.

12 (e) A Participating Candidate shall not use revenues distributed from the Fund
13 to:

- 14 (1) contribute to any other candidate, political committee or measure;
- 15 (2) support or oppose any candidate, political committee or measure not
- 16 in their race;
- 17 (3) use to repay any loans, debts or penalties;
- 18 (4) use to pay for consulting services to an individual unless the
- 19 individual is providing bona fide services to the campaign and is
- 20 compensated at fair market value;
- 21 (5) use for out-of-state travel;
- 22 (6) the purchase of “alcoholic beverages” as that term is defined at § 13-
- 23 2-2 ROA 1994; or
- 24 (7) Any payment to a registered voter in exchange for that voter
- 25 agreeing to vote in an election.

26 (f) Additional guidance and clarification regarding permissible and prohibited
27 uses of the distribution, only as those are identified and provided for in the
28 City Charter and Code, may be provided in the City Clerk’s rules and
29 regulations.

30 **Section 9. CANDIDATE REPORTING REQUIREMENTS.**

31 Applicant Candidates shall file financial disclosures in accordance with Article
32 XIII, Section 4 of this Charter.

33 **Section 10. FUND CREATION - FUND USE.**

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- 1 (a) There is created in the City Treasury the "Open and Ethical Elections
2 Fund" solely for the purposes of:
- 3 (1) financing the election campaigns of Participating Candidates for
4 Covered Offices;
- 5 (2) paying administrative and enforcement costs of the Open and Ethical
6 Elections Code; and
- 7 (3) carrying out all other specified provisions of the Open and Ethical
8 Elections Code.
- 9 (b) The City Treasurer shall invest the Fund as other City funds are invested
10 and pursuant to Section 4-1-10 ROA 1994, and all income derived from the
11 Fund shall be credited directly to the Fund. Within 30 days after the end of
12 each fiscal year, the City Treasurer shall furnish the Mayor and Council a
13 report of all investment activity of the past year in connection with the
14 administration of the Fund. Remaining balances at the end of a fiscal year
15 shall remain in the Fund and shall not revert to the general Fund.
- 16 (c) Money received from the following sources shall be deposited directly into
17 the Fund:
- 18 (1) Qualifying Contributions that have been submitted to the Clerk;
- 19 (2) any recurring balance of unspent Fund money distributed to a
20 Participating Candidate who does not remain a Participating Candidate
21 through the municipal election period for which the money was
22 distributed;
- 23 (3) money that remains unspent or unencumbered by a Participating
24 Candidate following the date of the regular municipal election;
- 25 (4) Seed Money that exceeds 10% of the applicable spending limit; and
- 26 (5) additional money appropriated by the Council based on
27 recommendations received by the Clerk and the City Attorney.
- 28 (d) One-tenth of 1% of the approved General Fund (Fund 110) appropriation
29 shall be reserved in the Fund to fund Participating Candidates for the 2007
30 regular municipal election and subsequent regular municipal elections as
31 provided in the Open and Ethical Elections Code.
- 32 (d) The Fund shall also be funded by voluntary contributions from members of
33 the public. Money in the Fund is appropriated to the Clerk to carry out the

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1 purposes of the Open and Ethical Elections Code.

2 Section 11. DETERMINATION OF FUND AMOUNT.

3 (a) Once the Open and Ethical Elections Code is enacted, the Clerk shall
4 prepare and provide to the Mayor and Council an annual report
5 documenting, evaluating and making recommendations relating to the
6 administration, implementation and enforcement of the Open and Ethical
7 Elections Code.

8 (b) In the report, the Clerk shall set out the revenues received to date, the
9 expected costs to the Fund for the next election cycle and the amount of
10 any annual appropriation from the Council that will be required to meet this
11 need.

12 Section 12. TIMING AND AMOUNT OF FUND DISTRIBUTION.

13 (a) The Clerk shall distribute money from the Fund to Participating Candidates.
14 The Clerk shall distribute revenue within three business days of
15 certification. In the event that a Candidate's certification for public
16 financing or qualification by the County Clerk as a Candidate has been
17 challenged, the Clerk shall distribute funds to the Participating Candidate
18 within three business days of receiving notice that the certification and/or
19 qualification by the County Clerk as a Candidate has been upheld.

20 (b) The Clerk shall distribute the \$1.75 per registered City voter to Mayoral
21 Participating Candidates and \$1.00 per registered City voter residing in the
22 district in which the Participating Council Candidate desires to represent.
23 Notwithstanding the foregoing, in Council districts containing fewer than
24 40,000 registered voters, the Clerk shall distribute \$40,000 to each
25 Participating Council Candidate, in lieu of \$1.00 per registered City voter
26 residing in the district.

27 (c) The amount of revenue to be distributed to a Participating Candidate shall
28 be reduced by an amount equal to the aggregate amount of Seed Money
29 contributions received by the Participating Candidate during the
30 Exploratory and Qualifying Periods.

31 (d) A Participating Candidate may withdraw as a Participating Candidate by
32 filing a written statement of withdrawal with the Clerk.

33 (e) If the withdrawn Participating Candidate continues to participate in the

- 1 election as a Non- Participating Candidate then:
2 (1) at the time the statement of withdrawal is filed, the candidate shall
3 deliver to the Clerk an amount of money equal to all monies distributed
4 to the candidate from the Fund after the candidate was certified as a
5 Participating Candidate plus interest of the total amount of monies
6 received at a rate of 12% per annum.
- 7 (f) If a Participating Candidate is not certified as a candidate, in accordance
8 with applicable state and other City law, then the candidate shall deliver to
9 the Clerk an amount of money equal to all monies distributed to the
10 candidate from the Fund after the candidate was certified as a Participating
11 Candidate plus interest of the total amount of monies received at a rate of
12 12% per annum.
- 13 (g) If a Participating Candidate entirely withdraws from a race for a Covered
14 Office then he shall immediately return any amount to the Fund that is
15 unspent or unencumbered at the time he ceases to be a Participating
16 Candidate before a regular municipal election.
- 17 (h) If a Participating Candidate becomes unopposed following the distribution
18 of funds, the Participating Candidate shall be promptly given notice by the
19 City Clerk and shall be given three (3) business days after being notified to
20 return any unspent or unencumbered funds. Following the return of funds,
21 the Participating Candidate becomes a privately financed candidate and is
22 no longer subject to the contribution and expenditure requirements of the
23 Open and Ethical Election Code.

24 Section 13. ADJUSTMENTS TO FUND DISTRIBUTION.

- 25 (a) Once the certification of participation for Participating Candidates for a
26 regular local election has been completed, the Clerk shall calculate the
27 total amount of money to be distributed in the election cycle, based on the
28 number of Participating Candidates and the allocations specified in Section
29 12 of the Open and Ethical Elections Code and shall then distribute the
30 Fund revenue within three business days.
- 31 (b) If the allocation specified in Subsection A of this section is greater than the
32 total amount available for distribution, then the amounts to be distributed
33 to individual Participating Candidates shall each be reduced by the same

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1 percentage as the reduction by which the total amount needed has been
2 reduced relative to the total amount available.

3 Section 14. RUN-OFF ELECTIONS.

4 (a) On the Friday after a regular local election when the election results are
5 certified, the Clerk shall issue Fund revenue to each Participating
6 Candidate involved in a runoff election in the following amounts:

- 7 (1) for Mayoral candidates \$1.00 per registered City voter; and
- 8 (2) for Council candidates \$.50 per registered City voter residing in a
9 Council district.

10 (b) Notwithstanding the foregoing, in Council districts containing fewer than
11 40,000 registered voters, the Clerk shall distribute \$20,000 to each
12 Participating Council Candidate, in lieu of \$.50 per registered City voter
13 residing in the district.

14 Section 15. COMMUNICATION OF PARTICIPATION STATUS TO VOTERS.

15 Once a candidate is certified as a Participating Candidate, the Clerk shall
16 publish the Participating Candidate's Certification on the City Clerk's website
17 along with the terms and conditions of the Open and Ethical Election Code the
18 Candidate has agreed to abide by.

19 Section 16. ADJUSTMENTS FOR INFLATION AND POPULATION GROWTH.

20 The City Attorney and the Clerk shall review the dollar amounts specified in
21 the Open and Ethical Elections Code periodically. The City Attorney and Clerk
22 shall recommend any necessary adjustments to reflect inflation or population
23 change to the Council and Mayor to consider amendments to the Code.

24 Section 17. ADMINISTRATION - CLERK -- DUTIES.

25 (a) The Clerk with the assistance of the City Attorney shall adopt rules to
26 insure effective administration of the Open and Ethical Elections Code.

27 (b) The rules shall include procedures for:

- 28 (1) qualifications, certification and disbursement of revenues and return of
29 unspent Fund revenues;
- 30 (2) obtaining Qualifying Contributions;
- 31 (3) certification of a candidate's participation;
- 32 (4) collection of revenues; and
- 33 (5) return of Fund disbursements and other money to the Fund.

1 amendment or amendments, and said ordinance being otherwise governed by
2 Article XI of this Charter.”

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

10 SECTION 7. COMPILATION. Sections 1, 2, 3, 4, and 5 of this ordinance shall
11 amend, be incorporated in, and made part of the City Charter.

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

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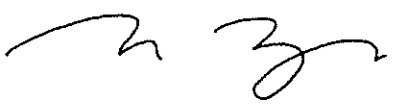
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1 PASSED AND ADOPTED THIS 5th DAY OF December, 2022
2 BY A VOTE OF: 9 FOR 0 AGAINST.

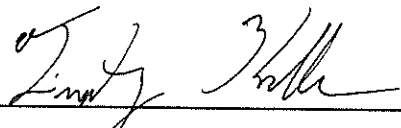
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Isaac Benton, President
City Council

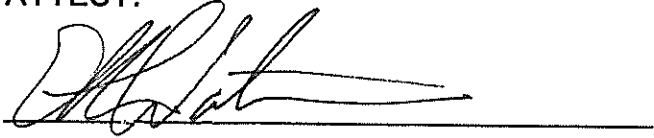
APPROVED THIS 14 DAY OF December, 2022

Bill No. C/S O-22-40



Timothy M. Keller, Mayor
City of Albuquerque

ATTEST:



Ethan Watson, City Clerk

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