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1 investigation shall be undertaken unless it is specifically authorized and
2 defined by the Board [or City Clerk]. For the purposes of this section, the
3 term "allegations" means both any formal charges filed with the Board [or
4 City Clerk] or initiated by the Board [or City Clerk] and other information
5 raising a substantial question related to compliance with the Code of
6 Ethics [,the Open and Ethical Election Code,] or the Election Code~~[, which~~
7 ~~information at least four members of the Board vote to investigate]~~. Such
8 investigation may relate to violation of the Code of Ethics~~[, the Open and~~
9 ~~Ethical Election Code,]~~ or the Election Code.

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

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

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

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

31 Section 2. DEFINITIONS.
32 (a) "Anonymous Contribution" means a contribution received by a candidate
33 or a Measure Finance Committee for which the contributor cannot be

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1 identified. Contributions received by a host pursuant to Section 4(j) of this
2 Election Code shall not be considered anonymous contributions.

3 (b) ["Broadly Distributed" means material that has been sent, delivered, or
4 transmitted to more than 100 people.]

5 (c) "Board" means the Board of Ethics and Campaign Practices established
6 pursuant to Article XII of this Charter.

7 (d) "Campaign Materials" means any published, printed or broadly distributed
8 campaign advertising or communications such as newspaper
9 advertisements, handbills, petitions, circulars, letters, radio or TV
10 broadcasts, cable distributions, social media sites, websites, electronic or
11 telephonic transmissions or similar written material used in a campaign by
12 a candidate or a Measure Finance Committee.

13 (e) "Candidate" means any individual who has (1) obtained a nominating
14 petition from the City Clerk pursuant to Section 4(c)1.D. of this Election
15 Code for the office of Mayor or Councilor, (2) filed an affidavit on a form
16 approved by the City Clerk, stating that he or she is a candidate for either
17 the office of Mayor or City Councilor, (3) filed as a candidate for elected
18 office as required by law, whichever first occurs, or (4) has received or
19 solicited contributions or made expenditures of one thousand dollars
20 (\$1,000) or more or authorized another person or campaign committee to
21 receive or solicit contributions or make expenditures of one thousand
22 dollars (\$1,000) or more for the purpose of seeking election to the office.

23 (f) "Candidate Finance Committee" consists of the candidate, the candidate's
24 treasurer, and any person authorized either expressly or by implication by
25 the candidate to participate in the solicitation, receipt, expenditure, or
26 employment of contributions on behalf of the candidate. "Member of the
27 Candidate Committee" means any such person.

28 (g) "Candidate's Treasurer" means the person who is appointed by a candidate
29 to receive, keep and disburse all money which may be collected, received
30 or disbursed by the candidate, the Candidate Finance Committee, or any of
31 its members.

32 (h) "Contributions" means:

33 1. Monies, loans, debts incurred, obligations incurred, property in-kind,

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- 1 including the use thereof, or commercial or professional services:
- 2 A. Incurred or received by a candidate, the candidate's treasurer, the
- 3 Candidate Finance Committee, or a member thereof on behalf of the
- 4 candidate, or by a Measure Finance Committee or a member thereof
- 5 on behalf of the Committee. For the purposes of this Subsection, a
- 6 debt or obligation shall be considered incurred at the time
- 7 authorization is given or contract made for the debt or obligation.
- 8 B. Not received by a person or entity named in Subparagraph A above,
- 9 but expended or employed on behalf of a candidate or measure,
- 10 where such monies, loans, debts incurred, obligations incurred,
- 11 property in-kind, or commercial or professional services have been
- 12 solicited or otherwise consented to by such committee or have been
- 13 expended or employed in a manner or amount directed, authorized,
- 14 either expressly, by implication, or consented to by such committee.
- 15 2. Contributions of property, including the use thereof, and contributions
- 16 of commercial or professional services shall be attributed a cash value
- 17 equal to their fair market value.
- 18 3. Notwithstanding the foregoing, none of the following shall be
- 19 considered a contribution: a candidate's own services and property,
- 20 other than cash; the use of a dwelling unit and residential premises
- 21 incidental thereto for any campaign purpose and the provision of
- 22 refreshments and entertainment in connection with such use; the
- 23 services of the person who is performing the duties of the candidate's
- 24 treasurer; and the use of vehicles for any campaign purpose other than
- 25 in connection with the performance of a commercial or professional
- 26 service.
- 27 4. The payment or waiver of legal fees to advise a candidate on
- 28 compliance with campaign laws or regulations, and payment or waiver
- 29 of legal fees or court costs to represent a candidate or candidate
- 30 committee in any action reasonably related to the campaign or election
- 31 in which the candidate or committee has been named as a defendant,
- 32 are contributions that must be disclosed, but are not subject to any
- 33 contribution limits in the Charter.

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

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- 1 **(3) is broadcast to, printed in a newspaper, distributed to, mailed to,**
- 2 **delivered by hand or otherwise distributed to an audience that includes**
- 3 **members of the electorate for a covered office.**
- 4 **(p) “Express Advocacy” means an expenditure made by a person or group,**
- 5 **other than a candidate or candidate’s committee, that advocates the**
- 6 **election or defeat of a candidate or ballot measure, including all costs of**
- 7 **designing, producing, or disseminating a communication that contains**
- 8 **phrases such as “vote for”, “re-elect”, “support”, “cast your ballot for”,**
- 9 **“[name of candidate] for [name of office]”, “[name of candidate] in [year]”,**
- 10 **“vote against”, “defeat”, “reject”, or similar phrases, or other explicit**
- 11 **references to a candidate or ballot measure that indicates intent to**
- 12 **influence an election.]**
- 13 **(q) "Expenditure" means the payment or furnishing of money or anything of**
- 14 **value or the incurring or repayment of indebtedness or obligation, by or on**
- 15 **behalf of any person, candidate or political committee in consideration for**
- 16 **any services, supplies, equipment or other thing of value performed or**
- 17 **furnished for any reason, including support of or opposition to a candidate**
- 18 **or political committee or for reducing the debt of a candidate or political**
- 19 **committee. Notwithstanding any other provision of the Charter, for the**
- 20 **purposes of Election Code and the Open and Ethical Elections Code, the**
- 21 **payment of legal fees to advise a candidate on compliance with campaign**
- 22 **laws or regulations, and the payment of legal fees or court costs to**
- 23 **represent a candidate or candidate committee in any action reasonably**
- 24 **related to the campaign or election in which the candidate or committee**
- 25 **has been named as a defendant, are expenditures that must be disclosed,**
- 26 **but are not subject to any expenditure limits in the Charter.**
- 27 **(r) [“Immediate Family” means the candidate’s spouse, parent, grandparent,**
- 28 **child, grandchild, sister, half-sister, brother, half-brother, stepparent, step-**
- 29 **grandparent, stepchild, step-grandchild, stepsister, stepbrother, mother-in-**
- 30 **law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law,**
- 31 **guardian, former guardian, domestic partner, and the immediate family of**
- 32 **the candidate’s spouse or domestic partner.**
- 33 **(s) “Independent Expenditure” mean any funds spent on express advocacy or**

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- 1 electioneering communications that are made without the cooperation,
- 2 consultation or coordination with, or at the request or suggestion of, a
- 3 candidate, a candidate's authorized committee or an agent thereof. An
- 4 independent expenditure may include materials already distributed to the
- 5 public or broadcast by a candidate, the candidates authorized committee or
- 6 an agent thereof.
- 7 (t) “Mass Communications” means any communication of substantially
- 8 identical content reasonably expected to reach 100 or more individuals
- 9 within three (3) months of a regular or special election, or within 45 days of
- 10 a runoff election. This includes communications sent directly to
- 11 individuals, and communications placed or posted where they will likely be
- 12 seen by 100 or more individuals, such as signs.]
- 13 (u) "Measure" means any proposition submitted to a popular vote at an
- 14 election, whether by initiative, referendum or recall procedure or otherwise.
- 15 (v) "Measure Finance Committee" means a political committee or any person
- 16 or combination of two or more persons acting jointly in aid of or in
- 17 opposition to the effort of anyone seeking to have their name placed on the
- 18 ballot for city office, a petition to place a measure on the ballot pursuant to
- 19 Article III of this Charter, voter approval or disapproval of one or more
- 20 measures on the ballot and/or the election to, or recall from, office of one
- 21 or more candidates for office when such person or people have accepted
- 22 contributions in excess of \$250 or make expenditures in excess of \$250 for
- 23 any of the purposes listed heretofore.
- 24 (w) "Person" means any individual, cooperative association, club, corporation,
- 25 company, firm, partnership, joint venture syndicate, profit or nonprofit
- 26 organization, or other entity.
- 27 (x) ~~[Notwithstanding any other provision of the Charter, for the purposes of~~
- 28 ~~Election Code and the Open and Ethical Elections Code, "Independent~~
- 29 ~~Expenditure" means any funds spent on Express Advocacy or~~
- 30 ~~Electioneering Communications that are made without the cooperation,~~
- 31 ~~consultation or coordination with, or at the request or suggestion of, a~~
- 32 ~~candidate, a candidate's authorized committee or an agent thereof. An~~
- 33 ~~Independent Expenditure may include materials already distributed to the~~

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1 ~~public or broadcast by a candidate, the candidates authorized committee or~~
2 ~~an agent thereof.~~

3 (y) ~~Notwithstanding any other provision of the Charter, for the purposes of~~
4 ~~Election Code and the Open and Ethical Elections Code, "Coordinated~~
5 ~~Expenditure" means any expenditure made with the cooperation,~~
6 ~~consultation or coordination with, or at the request or suggestion of, a~~
7 ~~candidate, a candidate's authorized committee or an agent thereof. Any~~
8 ~~expenditure that is coordinated within the meaning of this paragraph is an~~
9 ~~In-Kind Contribution to the candidate or candidate's committee with whom~~
10 ~~or with which it was coordinated and the candidate must report the~~
11 ~~Coordinated Expenditure as an In-Kind Contribution.]~~

12 (z) "In-Kind Contribution" means a good or service, other than money, having
13 monetary value not to exceed the limits set in Section 4 of Article XIII, but
14 not including an individual who volunteers his own personal service.
15 Professional services, including legal services, accounting services,
16 consulting services and similar services provided directly from the
17 professional to the Candidate are permitted, provided no single In-Kind
18 Contributor exceeds the limits set in Section 4 of Article XIII.
19 Notwithstanding the foregoing, a Candidate may accept unlimited In-Kind
20 Contributions in the following areas:

21 (1) legal services provided directly from attorneys for the purpose of
22 providing legal advice to comply with election laws and public financing
23 laws,

24 (2) professional services provided directly from the professional, including
25 attorneys, experts and consultants, for the sole purpose of participating
26 in a proceeding under Section 8 of the Code of Ethics, Section 10 of the
27 Election Code, and Sections 20 and 21 of the Open and Ethical Elections
28 Code, and

29 (3) office space.

30 Such In-Kind Contributions shall be reported [~~promptly~~] [on the next
31 statement filed with the Clerk or within 30 days of receiving the goods or
32 services].

33 (aa) "Reporting individual" means every public official, candidate or

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1 treasurer of a campaign committee and every treasurer of a measure
2 finance committee.

3 Section 3. ~~[CANDIDATE]~~ DISCLOSURE ~~[WITH DECLARATION OF~~
4 ~~CANDIDACY]~~.

5 Each candidate shall file a financial disclosure with the ~~[Board,]~~ [City Clerk]
6 ~~[within two days of filing the Declaration of Candidacy with the County Clerk, a~~
7 ~~notarized statement, signed by the candidate under oath,]~~ setting forth a
8 listing of the candidate's membership's and positions, if any, in professional
9 organizations, and any source of income that accounts for 5% or more of the
10 candidate's total income, and any known present business relationships the
11 candidate has or may have with the city, and any and all real estate interests
12 held by the candidate within Bernalillo County, excluding the candidates'
13 home. [The candidate disclosure shall be filed with the City Clerk when the
14 candidate becomes a declared candidate, be on a form prescribed by the City
15 Clerk, and shall be sworn and attested to under penalty of perjury by the
16 Candidate.]

17 Section 4. CAMPAIGN FINANCING.

18 (a) *One Candidate Finance Committee.* Each candidate shall establish no more
19 than one Candidate Finance Committee and shall appoint a treasurer who
20 shall not be the candidate.

21 (b) *One Bank Account Filing Requirements.*

22 1. Each candidate or the candidate's treasurer and each Measure Finance
23 Committee shall establish one and only one campaign bank checking
24 account for each election. ~~[All parties having signature authorization for~~
25 ~~the checking account, the checking account number, and the bank~~
26 ~~branch name shall be registered with the Board upon filing a~~
27 ~~Declaration of Candidacy or formation of a Measure Finance~~
28 ~~Committee.]~~ [The City Clerk shall issue a form to be submitted by
29 campaigns and committees disclosing bank account information.]

30 2. All contributions of monies received for the benefit of the candidate's
31 campaign or the Measure Finance Committee shall be deposited in that
32 account, and all disbursements shall be made from that account.

33 3. Each candidate and each Measure Finance Committee shall file with the

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1 bank at which the campaign checking account has been established a
2 letter authorizing the release of information concerning that account to
3 the ~~[Board]~~ [Clerk] and shall submit a copy of the letter of authorization
4 to the Board. Upon the request of the ~~[Board]~~ [Clerk], each candidate,
5 the candidate's treasurer, or the chairperson or treasurer of each
6 Measure Finance Committee shall provide to the ~~[Board]~~ [Clerk] all bank
7 records, cancelled checks, and any other financial information relating
8 to the campaign as may be requested by the ~~[Board]~~ [Clerk].

9 **(c) Disclosure of Campaign Financing.**

10 1. Each candidate for the office of Mayor or Councilor and each Measure
11 Finance Committee, shall file with the ~~[Board]~~ [City Clerk] the statements
12 required in Section 4(c)2 of this Election Code, each of which shall be
13 cumulative, signed under oath by the candidate or the candidate's
14 treasurer or by the chairperson or treasurer of the Measure Finance
15 Committee, setting forth through 5:00 p.m. of the day preceding the
16 filing of each statement:

17 A. The total of all contributions, which shall include all contributions
18 received, regardless of whether the contribution has been
19 deposited in the candidate's or Measure Finance Committee's
20 campaign bank account. A contribution is deemed received when
21 a candidate or a Measure Finance Committee or any agent of a
22 candidate or a Measure Finance Committee receives a
23 contribution or the benefit of the services donated.

24 B. When the contributor is an individual, the name [and address] of
25 the contributor, the contributor's principal business or
26 occupation, the name and address of the contributor's employer,
27 if self employed, the address of the contributor's business, and
28 the nature of the contributor's or the contributor's employer's
29 business. If the contributor is retired or not employed, the
30 residential address of the contributor shall be disclosed. When
31 the contributor is an entity other than an individual, the name and
32 address of the contributor, the business or activities conducted
33 by the contributor and the owners and managers of the

- 1 contributor. The amount of each contribution and the cumulative
2 value of all contributions contributed by the contributor shall be
3 disclosed. Measure Finance Committees that support or oppose
4 more than one candidate or measure shall specify in separate
5 sections in each disclosure statement the candidate or measure
6 to which each contribution and expenditure applies. In the event a
7 contribution or expenditure applies to more than one candidate or
8 measure, the pro rata share of such contribution or expenditure
9 shall be clearly identified for each candidate or measure.
- 10 C. All expenditures made on behalf of the campaign, including any
11 reimbursements and the nature thereof, and the name and
12 address of the person or business to which payment was made.
- 13 (A) Reporting of expenditures shall include for each
14 expenditure including type and quantity of items
15 purchased, names and roles of staff paid, names of
16 companies and materials produced, etc.
- 17 (B) The Campaign and Election Auditor, as provided for in
18 Article XIII, Section 9 shall, at their discretion, request
19 additional details of expenditures or contributions.]
- 20 D. A person seeking to qualify to be on the ballot for the office of
21 Mayor or Councilor shall include any person who has obtained a
22 nominating petition form approved by the City Clerk, or who has
23 received or solicited contributions or made expenditures of one
24 thousand dollars (\$1,000) or more or authorized another person
25 or campaign committee to receive or solicit contributions or make
26 expenditures of one thousand dollars (\$1,000) or more for the
27 purpose of seeking election to the office. The City Clerk shall
28 issue an approved nominating petition only to the person seeking
29 to be on the ballot. Such approved nominating petition forms
30 shall state the name of the person and the city office for which
31 such person is petitioning to qualify to be on the ballot. People
32 who have sought to be on the ballot as described above, but who
33 do not qualify for the ballot or do not file a declaration of

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1 candidacy are required to file as provided in this section by 5:00
2 p.m. on the second Monday in May, a report of all expenditures
3 made and contributions received on or before the first Monday in
4 May and not previously reported and to file a final report by 5:00
5 p.m. on the second Monday in November, a report of all
6 expenditures made and contributions received on or before the
7 first Monday in November and not previously reported.

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

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

29 G. In addition to other campaign disclosure requirements of the
30 Election Code, a candidate shall designate in his or her
31 disclosure reports those contributors who have contracts
32 pursuant to which they receive funds from the employer of the
33 candidate if the candidate was solely or partially responsible for

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1 the recommendation or award of the contract or for the
2 administration of the contract. The City Clerk shall post this
3 designation separately from the other contributions on the city's
4 website.

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

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

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

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

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

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

32 (D) by 5:00 p.m. on the second Monday in July, a report of all
33 expenditures made and contributions received on or

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- 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, 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;

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(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 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

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- 1 schedule provided for in Subsection A of this section.
- 2 E. A report of expenditures and contributions filed after a deadline
- 3 set forth in this section shall not be deemed to have been timely
- 4 filed.
- 5 F. Except for candidates and public officials who file a statement of
- 6 no activity, each reporting individual shall file a report of
- 7 expenditures and contributions pursuant to the filing schedules
- 8 set forth in this section, regardless of whether any expenditures
- 9 were made or contributions were received during the reporting
- 10 period. Reports shall be required until the reporting individual
- 11 delivers a report to the City Clerk stating that:
 - 12 (A) there are no outstanding campaign debts;
 - 13 (B) all money has been expended in accordance with the
 - 14 provisions Section 4 of Article XIII, the Election Code;
 - 15 (C) and the bank account has ~~[been closed]~~ [a zero balance].
- 16 G. Each treasurer of a measure finance committee shall file a report
- 17 of expenditures and contributions pursuant to the filing schedules
- 18 set forth in this section until the treasurer files a report that
- 19 affirms that the committee has dissolved or no longer exists and
- 20 that its bank account has ~~[been closed]~~ [a zero balance].
- 21 H. A reporting individual who is a candidate within the meaning of
- 22 the Election Code because of the amount of contributions the
- 23 candidate receives or expenditures the candidate makes and who
- 24 does not ultimately file a declaration of candidacy or a nominating
- 25 petition with the City Clerk and does not file a statement of no
- 26 activity shall file biannual reports in accordance with Subsection
- 27 A of this section.
- 28 I. Reports required by this section shall be subscribed and sworn to
- 29 by the candidate or the treasurer of the measure finance
- 30 committee. A report filed electronically shall be electronically
- 31 authenticated by the candidate or the treasurer of the measure
- 32 finance committee using an electronic signature in conformance
- 33 with the Uniform Electronic Transactions Act. For the purposes of

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1 Article XIII, Section 4, a report that is electronically authenticated
2 in accordance with the provisions of this subsection shall be
3 deemed to have been subscribed and sworn to by the candidate
4 or the treasurer of the political committee who was required to file
5 the report.

6 J. Reports required by this section shall be filed electronically by all
7 reporting individuals.

8 K. Reporting individuals may apply to the City Clerk for exemption
9 from electronic filing in case of hardship, which shall be defined
10 by the City Clerk.

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

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

30 (f) *Ban on Contributions from Foreign Nationals.* No candidate for Mayor or
31 Council, shall accept a contribution in support of the candidate's campaign
32 from any person or entity from a foreign national without lawful United
33 States permanent residence.

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1 (g) *Unexpended Contributions.* Any contributions not expended on the
2 campaign shall be disposed of [, such that the campaign account is brought
3 to a zero balance], at the option of the candidate or chairperson of a
4 Measure Finance Committee, by one of the following methods:

- 5 (1) Retained in the campaign or Measure Finance Committee banking
6 checking account for a possible runoff election for that office,
 - 7 (2) Returned to the person who made the contribution,
 - 8 (3) Placed in the City's General Fund, or
 - 9 (4) Given to a charity identified by the candidate.
- 10 The final campaign financing statement shall reflect the final disposition
11 of such contributions.

12 (h) *Anonymous Contributions.*

- 13 (1) All anonymous contributions shall be disposed of by a candidate or
14 the chairperson of a Measure Finance Committee either by placing
15 the contribution in the City's General Fund or by giving the
16 contribution to a charity.
- 17 (2) An anonymous contribution shall not be considered to be a
18 contribution to or expenditure of the campaign; however, a record of
19 all anonymous contributions shall be kept by the candidate or the
20 candidate's treasurer, or by the chairperson or treasurer of the
21 Measure Finance Committee and the receipt and disposition of every
22 anonymous contribution shall be reported ~~[to the Board, in writing,~~
23 ~~at the time]~~ [in] the campaign financing disclosure statements
24 required by subsection (c) of this section are filed. Such report must
25 disclose the goods, services, monies, or other contributions
26 received, its value, the date of receipt and the date and method of
27 disposition.

28 (i) For the purposes of this section, contributions and expenditures include
29 those contributions received and expenditures made by or on behalf of an
30 individual at any time prior to the individual filing a Declaration of
31 Candidacy for the office of Mayor or Councilor through the time the final
32 campaign financing disclosure statement is due, or by or on behalf of a
33 Measure Finance Committee at any time prior to the relevant election

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1 through the time the final campaign financing disclosure statement is due.

2 (j) *Campaign Finance Records.*

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

9 (2) Campaign Financial Records.

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

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

- 26 1) Record in-kind contributions as both contributions and
27 expenditures equal to the fair market value of the goods
28 or services received.
- 29 2) Record campaign loans as contributions, with
30 subsequent repayment of loans credited against
31 contributions.
- 32 3) Record returned contributions as credits against
33 contributions.

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4) Record names of contributors on the bank deposit slips.

~~(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.]~~ [During the election cycle, or within one year after the date of the election, the Campaign and Election Auditor, as provided for in Article XIII, Section 9 may request a candidate or committees' campaign finance records so the Campaign and Election Auditor can perform an additional audit on the campaign or committee. The results of the audit will be submitted to the Board of Ethics and the City Clerk.]

(k) Fund-Raising Activity.

- (1) The gross receipts of a fund-raising activity on behalf of a candidate are considered to be campaign contributions, and all expenditures associated with such a fund-raising activity are considered to be campaign expenditures. As used in this subsection, the term "gross receipts" includes all monies and donations of any kind which are received as part of the fund-raising activity.
- (2) The host of a fund-raising activity on behalf of a candidate or Committee shall be responsible for reporting the contributions resulting from the activity unless contributors are identified in the

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1 required manner on the Disclosure of Campaign Financing
2 Statement, and the limits to contributions specified in subsection (d)
3 of this Section 4 shall apply as if the total contributions at the fund-
4 raising activity, not otherwise reported, were made by the host.

5 (l) *Measure Campaign Financing.* Any person or group which has contributed
6 in excess of thirty percent of the Mayor's salary to support or oppose a
7 measure [or candidate] shall have the name of such person or group
8 inserted into the name of the Measure Campaign Committee to which the
9 funds were contributed or shall create a new committee with the name of
10 the contributor in the committee name. It is the obligation of the Measure
11 Finance Committee to immediately inform the [Board] [Clerk] of the
12 Committee's required name change [by forming a new committee with the
13 funds, or updating the committee name with the City Clerk's Office and on
14 the campaign finance website]; the Committee shall simultaneously report
15 the amount of the contribution which triggers the name change. For the
16 purposes of this subsection, "Mayor's salary" means the salary paid by the
17 City of Albuquerque as of the date of the contribution; support or oppose a
18 measure [or candidate] covers qualification for the ballot plus voter
19 approval or disapproval of a given measure.

20 Section 5. CAMPAIGN MATERIALS [AND REQUIRED DISCLAIMERS].

21 [(a) Campaign Materials.
22 Each candidate and each chairperson of each Measure Finance Committee
23 shall ensure that an image of all broadly distributed campaign material used in
24 the campaign is filed with the City Clerk's Office on or prior to the day the
25 financial report disclosing the expenditure for said campaign material is due.
26 Campaign materials shall be filed electronically in a manner prescribed by the
27 City Clerk. If the campaign material is a video or radio broadcast, a copy of the
28 video or radio broadcast shall be uploaded or a link to a copy of the video or
29 radio broadcast shall be sent directly to the City Clerk and the Independent
30 Auditor.

31 (b) Required Disclaimers.
32 Each candidate and each chairperson of each Measure Finance Committee
33 shall ensure that all campaign materials display a clear and conspicuous

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1 disclaimer stating information on how the material was paid and any
2 additional information as required by the rules promulgated by the City Clerk.]
3 ~~[Each candidate and each chairperson of each Measure Finance Committee~~
4 ~~shall ensure that all campaign materials specify the name of the campaign or~~
5 ~~committee who authorized the printing or distribution of such material and the~~
6 ~~name and address of the establishment that printed or otherwise created the~~
7 ~~campaign materials; provided, that the name and address of the printing~~
8 ~~establishment is not required to be specified in a newspaper advertisement.~~
9 ~~Each candidate and each chairperson of each Measure Finance Committee~~
10 ~~shall also ensure that a copy of each campaign material used in the campaign~~
11 ~~is filed with the City Clerk's Office on or prior to the day the financial report~~
12 ~~disclosing the expenditure for said campaign material is due.]~~

13 Section 6. MEASURE FINANCE COMMITTEES.

14 (a) Each Measure Finance Committee shall register with the City Clerk within
15 five days of formation by preparing and filing ~~[with the Board]~~ a statement,
16 signed by the chairperson of the Committee, setting forth:

- 17 1. The exact name of the Committee;
- 18 2. The official address and phone number of the Committee; ~~[and]~~
- 19 3. The names of the officials of the Committee[;
- 20 4. The purpose of the MFC including the measure(s) or candidate(s)
21 supported or opposed by the MFC; and
- 22 5. Acknowledgement of understanding of the Election Code, the Board's
23 Rules and Regulations, and the disclosure requirements for financial
24 statements].

25 ~~[(b) — When knowledge is received of the formation and existence of any~~
26 ~~Measure Finance Committee, the Board shall furnish to the chairman,~~
27 ~~moderator, or head (however designated; herein referred to as the~~
28 ~~"chairperson") of such committee, and also the fund-raising member~~
29 ~~thereof (however designated), if known, a copy of this Election Code and~~
30 ~~the Rules and Regulations of the Board, and call attention to the~~
31 ~~requirements for reporting contributions and expenditures by the Measure~~
32 ~~Finance Committee as provided for in this Election Code. Within five days~~
33 ~~from receipt of said notification from the Board, the Measure Finance~~

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1 ~~Committee shall prepare and file with the Board a statement, signed by the~~
2 ~~chairperson of the Committee, setting forth:~~
3 ~~1. The exact name of the Committee;~~
4 ~~2. The official address and phone number of the Committee;~~
5 ~~3. The names of the officials of the Committee;~~
6 ~~4. and Acknowledgement of receipt of a copy of this Election Code and the~~
7 ~~Board's Rules and Regulations and of the requirements regarding filing~~
8 ~~of reports.]~~

9 (b) It is recognized that an affirmative duty rests on the officials of any such
10 Measure Finance Committee to be aware of the provisions of this Election
11 Code, and nothing contained in this Section shall exempt a Measure
12 Finance Committee from filing its statement of formation or existence as
13 required herein at the earliest possible date. Failure to so file according to
14 the provisions of subsection (a) of this section shall subject the Committee
15 to a fine not to exceed the maximum amount authorized by state law or
16 public reprimand or both as provided in the Board's Rules and Regulations.
17 Accordingly, such officials are enjoined to prepare and file the statement
18 specified in subsection (a) of this section without such a request from the
19 Board. ~~[In instances where such statement is filed spontaneously by the~~
20 ~~Committee, and complies with subsection (a) of this section, the Board is~~
21 ~~excused from providing the notification specified in subsection (b) of this~~
22 ~~section.]~~

23 (c) A Measure Finance Committee's registration shall expire each year on
24 December 31st. A Measure Finance Committee shall renew its registration
25 with the City Clerk upon expiration or within five days of any contribution
26 collection or expenditure by the Measure Finance Committee that is in
27 excess of \$250. At the time a Measure Finance Committee renews its
28 registration, it shall review the information that is on file with the City Clerk
29 in accordance with subsection ~~[(b)]~~ [(a)] of this section and shall revise that
30 information if any changes have occurred since the prior registration.

31 Section 7. FAMILIARITY WITH ELECTION CODE AND RULES AND
32 REGULATIONS.

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1 The Board and Clerk shall ~~[have available on request by candidates and~~
2 ~~chairpersons of Measure Finance Committees,]~~ [make available electronically
3 on its website, or physically by request,] copies of the Board's Rules and
4 Regulations, the Clerk's Rules and Regulations, and the City Charter of
5 Albuquerque, revised to date, and require that each [registered] candidate
6 ~~[filing a Declaration of Candidacy]~~ and each ~~[chairperson of a]~~ [registered]
7 Measure Finance Committee acknowledge in writing ~~[receipt of and]~~ [on a
8 prescribed form] familiarity with the terms of this Election Code, the Clerk's
9 Rules and Regulations, and the Board's Rules and Regulations. [Each
10 candidate and chairperson of a Measure Finance Committee shall
11 acknowledge understanding of the Election Code, the Clerk's Rules and
12 Regulations, and the City Charter, and acknowledge responsibility for the
13 campaign or committee.] Each candidate and chairperson shall furnish an
14 address and phone number at which the candidate or chairperson can be
15 reached, and to which communications, including notifications of alleged
16 violations or hearings, can be mailed or delivered, and agreeing that notice left
17 at such address shall be deemed received by the candidate or chairperson.

18 Section 8. PRESERVATION OF RECORDS.

- 19 (a) The records and statements required by this Election Code shall be
20 preserved intact as public records by the Board for a period of at least seven
21 years after the election in question.
- 22 (b) All records of the Board in the conduct of its business, including minutes
23 of meetings and recommendations to the City Council and Mayor, shall be
24 preserved intact as permanent public records by the Board.

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

- 27 (a) The Board and City Clerk shall promulgate reasonable Rules and
28 Regulations for their conduct and in aid of interpretation and enforcement
29 of this Election Code, and amend such Rules and Regulations as they may,
30 from time to time, deem advisable; provided, that amendments to said
31 Rules and Regulations shall not be made by the Board or City Clerk during
32 the ninety days preceding an election. The current Rules and Regulations

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1 of the Board and City Clerk shall be made available in published form no
2 later than sixty days prior to any election.

3 (b) There is hereby created the position of Campaign and Election Auditor. The
4 Auditor shall be a Certified Public Accountant, a Registered Public
5 Accountant, [Certified Internal Auditor,] or have other qualified campaign
6 finance experience.

7 Section 10. ENFORCEMENT.

8 (a) *Charges of Violations.*

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

12 2. Any charge or charges that a candidate or the chairperson of a Measure
13 Finance Committee or any other group has committed a violation of this
14 Election Code or of the Rules and Regulations promulgated by the
15 Board or the City Clerk shall be made in writing, notarized and brought
16 before the City Clerk, pursuant to Rules and Regulations issued by the
17 City Clerk pursuant to this Section.

18 3. If the City Clerk determines that the complaint meets the requirements
19 in the Rules and Regulations issued by the City Clerk pursuant to this
20 Section, the City Clerk shall refer the complaint to the Board.

21 4. Except as provided in subsection (c) of this section, the Board shall
22 give written notice of such charge or charges to the candidate or
23 chairperson before taking further action.

24 (b) Notwithstanding any other provision in this section, the Board and/or the
25 City Clerk may, on their own initiative, initiate a charge or charges that a
26 candidate or the chairperson of a Measure Finance Committee or any other
27 group has committed a violation of this Election Code[, the Open and
28 Ethical Election Code,] or of the Rules and Regulations promulgated by the
29 Board or the City Clerk. In the event that inspection and/or audit of the
30 candidates or Measure Finance Committees campaign financial records
31 made pursuant to Section 4(j)3 results in a charge or charges against a
32 candidate or Measure Finance Committee, written notice to the candidate or

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- 1 chairperson of the charge or charges shall not be required before the
- 2 Board takes further action.
- 3 (c) Should the Board find, after due hearing, that a violation of this Election
- 4 Code or the Rules and Regulations of the Board has occurred, it may, for
- 5 each violation, issue a public reprimand or impose a fine not to exceed the
- 6 maximum amount authorized by state law, or do both.
- 7 (d) *Automatic Fines.* Notwithstanding subsection (d) of this section, a failure to
- 8 file or late filing shall subject the candidate or the chairperson of the
- 9 Measure Finance Committee or any other obligated person, whichever may
- 10 be the case, to an automatic fine and public reprimand according to the
- 11 schedules established in the Rules and Regulations of the Board. In
- 12 situations where there is an incomplete filing the candidate or the
- 13 chairperson of the Measure Finance Committee shall be notified of the
- 14 failure and shall have ten days from the date of notice to correct the failure.
- 15 If the incomplete filing is not corrected within ten days there shall be an
- 16 automatic fine and public reprimand. If the failure is corrected within ten
- 17 days and the Board determines from the face of the filings that any failure
- 18 appears to have been inadvertent and made in good faith, the Board shall
- 19 find that there has been no violation.
- 20 (e) In addition to imposing such sanctions, or as an alternative thereto, and if
- 21 the violator be a successful candidate in the election, the Board may
- 22 recommend to the Council that the violator be removed from office.
- 23 (f) The Council may, upon the recommendation of the Board, and after due
- 24 hearing of the charge, order the suspension or removal of an elected
- 25 official; provided, however, that no official shall be removed or suspended
- 26 except upon the concurrence of two-thirds of the Councilors qualified to
- 27 vote thereon.
- 28 (h) An appeal may be taken from any findings and action of the Board
- 29 pursuant to subsections (d) and (e) of this section and from any order of
- 30 the Council pursuant to subsection (g) of this Section to the District Court
- 31 of the Second Judicial District, by filing Notice of Appeal in the said District
- 32 Court within five days of the date of the action or order appealed from, and
- 33 by filing with said District Court within thirty days a true transcript and

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- 1 record of the proceedings upon which said action or order is based. The
2 hearing in District Court shall be held on said transcript and record only,
3 and new testimony shall not be taken.
- 4 (i) All fines not timely paid shall be assessed interest at the maximum rate
5 allowed by state law commencing on the thirty-first day following the date
6 that the fine was imposed.
- 7 (j) Any fines collected under this section shall be placed into the City's
8 General Fund.
- 9 (k) Any candidate who fails or refuses to file a report of expenditures and
10 contributions or statement of no activity or to pay a penalty imposed by the
11 City Clerk as required by Section 4 of Article XIII shall not, in addition to
12 any other penalties provided by law:
- 13 (1) have the candidate's name printed upon the ballot if the violation occurs
14 before and through the final date for the withdrawal of candidates; or
15 (2) be issued a certificate of nomination or election, if the violation occurs
16 after the final date for withdrawal of candidates or after the election,
17 until the candidate satisfies all reporting requirements of Article XIII,
18 Section 4, and pays all penalties owed.
- 19 (l) Any candidate who loses an election and who failed or refused to file a
20 report of expenditures and contributions or a statement of no activity or to
21 pay a penalty imposed by the City Clerk or Board of Ethics for a violation of
22 the Code of Ethics, the Election Code, the Open and Ethical Elections
23 Code, or Rules and Regulations promulgated by the City Clerk or the Board
24 of Ethics, shall not be, in addition to any other penalties provided by law,
25 permitted to file a declaration of candidacy or nominating petition for any
26 future election until the candidate satisfies all reporting requirements and
27 pays all penalties owed.

28 **Section 11. NON-WAIVER OF PENALTIES.**

29 Nothing herein set forth shall be construed to affect or otherwise diminish any
30 penalties otherwise provided by law for violation of this Election Code or the
31 Rules and Regulations promulgated by the Board or the Clerk, nor shall
32 anything herein set forth prevent the Board from bringing to the attention of

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1 the proper authority any alleged violation coming to its attention which may be
2 subject to other penalties.

3 Section 12. AMENDMENTS.

4 This Election Code may be amended without requiring compliance with Article
5 VI of this Charter by ordinance adopted by a majority plus two of the entire
6 membership of the Council voting in favor of such amendment or
7 amendments, and said ordinance being otherwise governed by Article XI of
8 this Charter.

9 ~~[Section 13. REPRESENTATIVE INSPECTIONS.~~

10 ~~*Certification of Representatives.* All declared and certified candidates for
11 municipal office, measure finance committee or committee or organization
12 dedicated to turning out the voters on election day shall be entitled to
13 designate representatives who may enter polling places for the purpose of
14 observing voter signature rosters and observing the voting process. Each
15 candidate, measure finance committee, or committee or organization
16 dedicated to turning out voters on election day shall request from the City
17 Clerk the number of representative authorization passes that are wished for
18 use on election day. The deadline to request representative authorization
19 passes is 3:00 p.m. on the day prior to election day. The authorization passes
20 shall designate the name of the candidate, measure finance committee or
21 committee or organization dedicated to turning out voters on election day and
22 may be used at any polling place on election day. The authorization passes
23 may be used by those people designated by the candidate, measure finance
24 committee or committee or organization dedicated to turning out voters on
25 election day. The candidates' representatives' names need not appear on the
26 authorization pass.~~

27 ~~*Access to Signature Rosters.* Candidate, committee and/or organization
28 representatives who have received an authorization pass may enter the polling
29 places to observe the voter signature rosters and to observe the election
30 process during the hours the polling place remains open to voters. Those
31 representatives may observe the voter signature rosters at times and in a
32 place and manner that the presiding election judge determines shall not
33 interfere with the orderly and timely process of voting. Only members of the~~

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1 ~~precinct board shall handle the signature rosters. The precinct election judges~~
2 ~~shall facilitate the representatives in observing each page of the voter roster.~~
3 ~~Representatives present in polling places to observe the conduct of the voting~~
4 ~~process shall not interfere with the orderly and timely process of voting. No~~
5 ~~more than one representative for a particular candidate, committee or~~
6 ~~organization shall be present at a polling place at a time. Should~~
7 ~~representatives for more than one candidate, committee or organization wish~~
8 ~~to observe the voter signature roster at the same time, the presiding election~~
9 ~~judge shall determine the manner in which such observation shall take place.~~
10 ~~*Orderly Conduct.* In the event a candidate, committee or organization~~
11 ~~representative is disorderly or fails to obey the instructions of a precinct~~
12 ~~election judge, the representative shall surrender his authorization pass and~~
13 ~~shall no longer be entitled to be present at the polling place as a~~
14 ~~representative.~~

15 ~~Section 14. [PHOTO VOTER IDENTIFICATION REQUIRED].~~

16 ~~When a voter approaches the election polling place seeking to vote, the voter~~
17 ~~must identify himself or herself audibly by name. The Municipal Election Clerk~~
18 ~~shall locate in the election rolls the name spoken and ask the individual~~
19 ~~seeking to vote for one current valid identification card containing the voter's~~
20 ~~name and photograph. Such photo identification card may include any card~~
21 ~~issued by a government agency, driver's license, student identification card,~~
22 ~~commercial transaction card such as a credit or debit card, insurance card,~~
23 ~~union card, a professional association card or the voter identification card~~
24 ~~issued by the City Clerk. If the individual is unable to provide a photo~~
25 ~~identification card, he or she shall be allowed to vote on a provisional ballot,~~
26 ~~but only if he or she swears or affirms under penalty of perjury in an affidavit~~
27 ~~provided by the City Clerk that he or she is the registered voter listed on the~~
28 ~~voter registration rolls at the precinct at which he or she presented himself or~~
29 ~~herself to vote and provides his or her date of birth and the last four digits of~~
30 ~~his or her social security number. Provisional ballots shall be issued for no~~
31 ~~other reason than the failure to present photo identification. Provisional~~
32 ~~ballots shall be counted only by the Municipal Canvassing Board and only~~
33 ~~upon the voter's presentation to the City Clerk within the ten day canvassing~~

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1 ~~period one of the photo identification cards described in this section. The~~
2 ~~Municipal Canvassing Board shall also verify that the voter who cast the~~
3 ~~provisional ballot was registered to vote for the election and did not vote~~
4 ~~elsewhere in the same election. If a voter who cast a provisional ballot under~~
5 ~~this section swears or affirms under penalty of perjury in an affidavit provided~~
6 ~~by the City Clerk within the ten day canvassing period that he or she has a~~
7 ~~religious objection to being photographed, such voter shall not be required to~~
8 ~~submit photo identification. The Municipal Canvassing Board shall otherwise~~
9 ~~verify that the provisional ballot was valid. The City Clerk shall develop and~~
10 ~~provide instructions for elections judges concerning the requirements of this~~
11 ~~Section and a method of complaint and resolution for individuals who feel~~
12 ~~they have been discriminated against by election officials' or the City Clerk's~~
13 ~~administration of this Section, in accordance with federal intimidation~~
14 ~~guidelines. Knowingly executing a false statement constitutes perjury as~~
15 ~~provided in Section 30-25-1 NMSA 1978 and voting on the basis of a falsely~~
16 ~~executed statement constitutes false voting as provided in Section 1-20-8~~
17 ~~NMSA 1978. Voter photo identification cards shall be issued by the City Clerk~~
18 ~~without charge to any voter who presents any two of the following~~
19 ~~identification documents that show the name and address of the voter: a state~~
20 ~~issued identification card, social security card, student identification card,~~
21 ~~library card, insurance card, selective service card, union card, professional~~
22 ~~association card, utility bill, bank statement, government check or a paycheck.~~
23 ~~If the individual is unable to present any two of these documents to the City~~
24 ~~Clerk, then the voter shall swear or affirm in writing under penalty of perjury~~
25 ~~that he or she is the registered voter and shall be issued a voter photo~~
26 ~~identification card upon confirmation with the County Clerk that such person~~
27 ~~is presently registered to vote. The City Clerk issued voter photo identification~~
28 ~~card shall state on its face that it shall not be valid for identification other than~~
29 ~~for the purpose of voting in City Elections and shall not be valid if the voter is~~
30 ~~subsequently purged from the voter rolls. The Municipal Canvassing Board~~
31 ~~shall certify the results of the Municipal Election by the end of the tenth day~~
32 ~~after the day on which the election is held.~~

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1 Pursuant to ~~Article II, Section 2 (b) of the City Charter, this Section shall take~~
2 ~~precedence over the State Municipal Election Code. The provisions of this~~
3 ~~Section shall apply only to City of Albuquerque Municipal Elections. The~~
4 ~~provisions of this Section shall not apply to City of Albuquerque Municipal~~
5 ~~Elections conducted concurrently with any statewide special, general or~~
6 ~~primary election pursuant to Section 3-8-9 NMSA 1978.~~

7 ~~Section 15. EARLY VOTING.~~

8 ~~An Early Voter may vote in person on a voting machine beginning on the~~
9 ~~twentieth day before the election in the office of the City Clerk and any other~~
10 ~~alternate early voting location as established in an election resolution until the~~
11 ~~Friday immediately before the date of the election.~~

12 ~~Early voting locations shall have hours of operation as designated in the~~
13 ~~election resolution, but shall not open prior to 7:00 a.m. and shall not remain~~
14 ~~open after 8:00 p.m.~~

15 ~~The City Clerk shall:~~

16 ~~Ensure Early Voters have adequate access to early voting locations~~
17 ~~throughout the City of Albuquerque, which meet the same criteria as a polling~~
18 ~~place open on election day;~~

19 ~~Assure the security of the voting machines in the early voting locations;~~

20 ~~Ensure that Early Voters have not been issued an absentee ballot at the time~~
21 ~~the voter presents himself at an early voting location;~~

22 ~~Ensure that Early Voters cannot vote on election day or be issued an absentee~~
23 ~~ballot after early voting; and~~

24 ~~In addition to any other publication requirement, publish the early voting~~
25 ~~locations on the City's website.~~

26 ~~The City Clerk shall appoint a precinct board to each early voting location,~~
27 ~~who under the supervision of the City Clerk shall manage daily operations at~~
28 ~~the early voting locations.~~

29 ~~The precinct board shall include at least one presiding judge who shall enter~~
30 ~~the early voting location on days when voting takes place in the presence of at~~
31 ~~least one other member of the precinct board or City Clerk staff prior to~~
32 ~~opening the polls.~~

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1 ~~Upon entering the early voting location, the presiding judge, along with at~~
2 ~~least one other member of the precinct board, shall verify the number of~~
3 ~~ballots tallied on each voting machine.~~
4 ~~Upon the daily closing of polls and after every issued ballot has been placed~~
5 ~~in the voting machine, the presiding judge shall secure the alternate voting~~
6 ~~location and verify the number of ballots tallied on each voting machine.~~
7 ~~The presiding judge and witnessing precinct board member shall record the~~
8 ~~number of ballots tallied on the daily voting report which shall contain:~~
9 ~~The voting machine serial number;~~
10 ~~The beginning and ending public counter number for the day;~~
11 ~~The total number of voters for the day;~~
12 ~~and A place for the signature of the presiding judge and a precinct board~~
13 ~~member.~~
14 ~~The presiding judge shall immediately notify the City Clerk of any discrepancy~~
15 ~~in the daily voting report and shall not use the voting machine showing a~~
16 ~~discrepancy until such time as the City Clerk authorizes its use.~~
17 ~~No member of the precinct board or any other person may enter the early~~
18 ~~voting location after securing the location at the end of the voting day or prior~~
19 ~~to entering the location for opening unless under the supervision or express~~
20 ~~permission of the City Clerk.]”~~
21 SECTION 5. Article XVI of the City Charter shall be amended as follows and
22 the sections and subsection shall be renumbered accordingly:
23 “Section 1. [Title] [CITATION].
24 Sections 1 through 21 of this article may be cited as the "Open and Ethical
25 Elections Code".
26 Section 2. LEGISLATIVE INTENT.
27 The intent of the Open and Ethical Elections Code is to:
28 (A) Avoid both actual undue influence of large campaign donors and the
29 appearance of undue influence in Council and Mayoral elections and decision-
30 making;
31 (B) Diminish the public perception of corruption and strengthen public
32 confidence in the governmental and election process;

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- 1 (C) Provide well-qualified candidates with adequate funding to mount
- 2 campaigns to encourage competitive Council and Mayoral elections so that
- 3 the City’s residents have more choices about the leadership and direction of
- 4 the City;
- 5 (D) Increase the accountability of elected officials to their constituents who
- 6 elect them, as opposed to the contributors who fund their campaigns; and
- 7 (E) Insure that the City’s Council and Mayoral election process is fair,
- 8 responsible and ethical.

9 Section 3. DEFINITIONS.

10 As used in the Open and Ethical Elections Code:

- 11 (A) APPLICANT CANDIDATE. A candidate, but not a write-in candidate, running
- 12 for a Covered Office and who is seeking to be a Participating Candidate.
- 13 (B) APPLICABLE SPENDING LIMIT. The total amount a candidate may spend
- 14 on a campaign as determined by the City Clerk’s Office. For a City
- 15 Councilor, this amount is based on the number of registered voters in the
- 16 district the candidate is running in. For the Mayor, this amount is
- 17 determined by the number of registered voters in the City of Albuquerque.
- 18 For a participating candidate, the applicable spending limit is the amount
- 19 set for distribution from the Fund. Any seed money collected by an
- 20 applicant candidate will be subtracted from the distribution from the Fund.]
- 21 (C) CLERK. The City Clerk.
- 22 (D) CONTESTED ELECTION. A regular municipal election in which there is
- 23 more than one candidate for a City Council or Mayor position.
- 24 (E) COORDINATED EXPENDITURE. Any expenditure made with the
- 25 cooperation, consultation or coordination with, or at the request or
- 26 suggestion of, a candidate, a candidate's authorized committee or an agent
- 27 thereof. Any expenditure that is coordinated within the meaning of this
- 28 paragraph is an In-Kind Contribution to the candidate or candidate's
- 29 committee with whom or with which it was coordinated and the candidate
- 30 must report the Coordinated Expenditure as an In-Kind Contribution.]
- 31 (F) COVERED OFFICE. City Council or Mayor.
- 32 (G) ELECTIONEERING COMMUNICATION. Any communication broadcasted by
- 33 television or radio, printed in a newspaper or on a billboard, directly mailed

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- 1 or delivered by hand to personal residences or otherwise distributed that:
- 2 (1) unambiguously refers to any candidate; and
- 3 (2) is broadcasted, printed, mailed, delivered or distributed within
- 4 thirty days before a regular municipal election; and
- 5 (3) is broadcasted to, printed in a newspaper distributed to, mailed
- 6 to, delivered by hand to or otherwise distributed to an audience
- 7 that includes members of the electorate for a Covered Office.
- 8 (4) ELECTIONEERING COMMUNICATION does not include:
- 9 (A) any news articles, editorial endorsements, opinion or
- 10 commentary, writings or letters to the editor printed in a
- 11 newspaper, magazine or other periodical not owned or
- 12 controlled by a candidate or political party;
- 13 (B) any editorial endorsements or opinions aired by a
- 14 broadcast facility not owned or controlled by a candidate
- 15 or political party;
- 16 (C) any communication by Persons made in the regular
- 17 course and scope of their business or any communication
- 18 made by a membership organization solely to members of
- 19 such organization and their families; or
- 20 (D) paid for by a candidate or candidate's campaign
- 21 committee.
- 22 (H) EXPENDITURE. The payment or furnishing of money or anything of value
- 23 or the incurring or repayment of indebtedness or obligation, by or on
- 24 behalf of any Person, candidate or political committee in consideration for
- 25 any services, supplies, equipment or other thing of value performed or
- 26 furnished for any reason, including support of or opposition to a candidate,
- 27 political committee or measure for or for reducing the debt of a
- 28 Participating Candidate for nomination or election to a Covered Office.
- 29 (j) EXPLORATORY PERIOD.
- 30 (1) For Mayoral Applicant Candidates, the exploratory period begins at 246
- 31 days before the election, and ends 200 days before the election; and
- 32 (2) For Council Applicant Candidates, the exploratory period begins 191
- 33 days before the election, and ends 156 days before the election.

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- 1 (k) EXPRESS ADVOCACY. An Expenditure made by a Person or group, other
2 than a candidate or a candidate’s committee, that advocates the election or
3 defeat of a candidate, including all costs of designing, producing or
4 disseminating a communication that contains phrases such as “vote for”,
5 “re-elect”, “support”, “cast your ballot for”, “[name of candidate] for [name
6 of office]”, “[name of candidate] in [year]”, “vote against”, “defeat”,
7 “reject” or similar phrases.
- 8 (m) FUND. The Open and Ethical Elections Fund.
- 9 (n) IMMEDIATE FAMILY. The candidate’s spouse, parent, grandparent, child,
10 grandchild, sister, half-sister, brother, half-brother, stepparent, step-
11 grandparent, stepchild, step-grandchild, stepsister, stepbrother, mother-in-
12 law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law,
13 guardian, former guardian, domestic partner, the Immediate Family of the
14 candidate’s spouse or domestic partner.]
- 15 (o) INDEPENDENT EXPENDITURE. Any funds spent on Express Advocacy or
16 Electioneering Communications that are not coordinated with any
17 candidate’s campaign. The Clerk shall adopt regulations to determine
18 whether funds spent on Express Advocacy or Electioneering
19 Communications are coordinated Expenditures. Coordinated Expenditures
20 on Express Advocacy or Electioneering Communications are treated as
21 contributions.
- 22 (p) IN-KIND CONTRIBUTION. A good or service, other than money, having
23 monetary value not to exceed more than \$2,500.00, but not including an
24 individual who volunteers his own personal service. Professional services,
25 including legal services, accounting services, consulting services and
26 similar services provided directly from the professional to the Applicant
27 Candidate or Participating Candidate are permitted, provided no single In-
28 Kind Contributor exceeds the \$2,500.00 limitation herein and provided the
29 total value of all In-Kind Contributions does not exceed 10% of the
30 applicable spending limit per regular or run-off election. Notwithstanding
31 the foregoing, an Applicant Candidate or Participating Candidate may
32 accept unlimited In-Kind Contributions in the following areas: 1) legal
33 services provided directly from attorneys for the purpose of providing legal

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1 advice to comply with election laws and public financing laws. 2)
2 professional services provided directly from the professional, including
3 attorneys, experts and consultants, for the sole purpose of participating in
4 a proceeding under the Code of Ethics, the Election Code, the Open and
5 Ethical Elections Code, or the rules and regulations of the Board of Ethics
6 and/or City Clerk, and 3) office space. Such In-Kind Contributions shall be
7 reported as required by Article XIII. Section 4.

8 (q) **NONPARTICIPATING CANDIDATE.** A candidate running for a Covered Office
9 who does not choose to participate in the Open and Ethical Elections Code
10 or a candidate running for a Covered Office who declares an intent to
11 participate in the Open and Ethical Elections Code, but who fails to become
12 a Participating Candidate.

13 (r) **OPPOSING FUNDS.** Funds spent opposing a Participating Candidate. The
14 amount of Opposing Funds is calculated by determining the opponent of
15 the Participating Candidate who has the highest total of Expenditures and
16 supportive Independent Expenditures; the amount of Opposing Funds is
17 calculated by totaling the Expenditures made by that opponent, the amount
18 spent on Independent Expenditures in support of that opponent and the
19 amount spent on Independent Expenditures in opposition to the
20 Participating Candidate. No Independent Expenditure may be counted as
21 both opposing a Participating Candidate and in support of that candidate's
22 opponent.

23 (s) **PARTICIPATING CANDIDATE.** A candidate running for a Covered Office
24 who chooses to obtain financing pursuant to the Open and Ethical
25 Elections Code and who is certified to participate as an Open and Ethical
26 Elections Code Candidate.

27 (t) **PERSON.**
28 (1) a City resident;
29 (2) a labor organization, club, association or organization who have
30 members who are City residents; or
31 (3) a corporation, limited liability company, firm, partnership, joint stock
32 company or other entity conducting business in the City.

33 (u) **QUALIFYING CONTRIBUTION.** A [non-refundable] donation of \$5.00 in the

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- 1 form of cash, check, debit card, credit card or money order payable to the
- 2 Fund in support of an Applicant Candidate that:
 - 3 (1) for the Mayoral race is made by a registered City voter and for a
 - 4 Council race is made by a registered City voter residing in the district
 - 5 in which the Applicant Candidate desires to represent;
 - 6 (2) Is made during the designated Qualifying Period and obtained
 - 7 through efforts made with the knowledge and approval of the
 - 8 Applicant Candidate;
 - 9 (3) is acknowledged by a receipt that identifies the contributor's name
 - 10 ~~[and residential address on forms provided by the Clerk and that is~~
 - 11 ~~signed by the contributor, one copy of which is attached to the list of~~
 - 12 ~~contributors and sent to the City Clerk]; and~~
 - 13 (4) identifies which Applicant Candidate the City resident supports.
- 14 (v) QUALIFYING PERIOD.
 - 15 (1) For Mayoral Applicant Candidates the Qualifying Period begins 8:00
 - 16 a.m. 199 days before the election, and ends 5:00 p.m. 136 days before
 - 17 the election; and
 - 18 (2) For Council Applicant Candidates, the Qualifying Period begins 8:00
 - 19 a.m. 155 days before the election, and ends 5:00 p.m. 120 days
 - 20 before the election.
- 21 (w) REGULAR LOCAL ELECTION. An election that is held the first Tuesday
- 22 after the first Monday in November in odd numbered years.]
- 23 (x) SEED MONEY. A contribution in support of an Applicant Candidate of no
- 24 more than \$250.00 per Person, except for the Applicant Candidate who can
- 25 contribute up to \$2,500.00, raised for the primary purpose of enabling
- 26 Applicant Candidates to collect Qualifying Contributions and petition
- 27 signatures the aggregate amount of which may not exceed 20% of the
- 28 applicable spending limit. [Seed Money may only be accepted during the
- 29 Exploratory Period and the Qualifying Period. Seed Money contributed by
- 30 the candidate to their own campaign may be donated prior to the
- 31 exploratory period, or during the exploratory or qualifying period.]
- 32 (y) ELECTION CYCLE. The period beginning on the day after the regular or
- 33 run-off election for any municipal office and ending on the day of the next

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1 regular election for that office.
2 (z) CANDIDATE. "Candidate" has the same definition that is provided in Article
3 XIII, Section 2 of the Election Code, with the addition that "Candidate" also
4 includes any individual who has filed a declaration of intent to seek public
5 financing.

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

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

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

19 ~~(c) [An Applicant Candidate shall file a detailed contribution and Expenditure~~
20 ~~report regarding Seed Money and In-Kind Contributions with the Clerk at~~
21 ~~the time of filing a declaration of intent.]~~

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

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

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

- 20 **Section 6. SEED MONEY AND IN-KIND CONTRIBUTIONS.**
- 21 **(a) An Applicant Candidate may accept Seed Money not to exceed \$250.00**
- 22 **per Person.**
- 23 **(b) An Applicant Candidate may contribute up to \$2,500.00 from the**
- 24 **Applicant Candidate’s personal funds for Seed Money.**
- 25 **(c) Seed Money shall be deducted from the revenues distributed to the**
- 26 **Participating Candidate from the Fund.**
- 27 **(d) The aggregate amount of Seed Money received and spent by an**
- 28 **Applicant Candidate shall not exceed an amount equal to 20% of the**
- 29 **[applicable] distribution from the Fund, or the Applicable Spending**
- 30 **Limit to a Participating Candidate.**
- 31 **(e) An Applicant Candidate or Participating Candidate may accept In-Kind**
- 32 **Contributions from the beginning of the Exploratory Period up to the**
- 33 **regular municipal election, or, in the event that a Participating Candidate**

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1 is in a run-off, up to the run-off election. The value of any In-Kind
2 Contribution shall not count against the applicable limit on Seed Money
3 contributions. The aggregate amount of In-Kind Contributions received
4 by an Applicant Candidate shall not exceed an amount equal to 10% of
5 the applicable spending limit.

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

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

15 (h) Mayoral Applicant Candidates may accept Seed Money from [285] [246]
16 days before the election through [441] [136] days before the election.
17 Council Candidates may accept Seed Money from [469] [191] days
18 before the election through [85] [120] days before the election.

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

Section 7. CERTIFICATION OF PARTICIPATION.

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

- (1) signed and filed a declaration of intent to obtain fund revenue;
- (2) submitted the appropriate number of Qualifying Contributions;
- (3) qualified as a candidate pursuant to other applicable City and State
election law;
- (4) complied with Seed Money contribution and Expenditure

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- 1 restrictions;
- 2 (5) otherwise met the requirements for obtaining financing pursuant to
- 3 the Open and Ethical Elections Code;
- 4 (6) otherwise met any additional criteria for certification set forth in
- 5 rules by the Clerk;
- 6 (7) been qualified as a Candidate by the County Clerk; and
- 7 (8) there are not pending challenges to the County Clerk's qualification
- 8 of the Candidate.

9 (B) The Clerk shall certify Applicant Candidates running for Mayor and
10 Council, complying with the requirements of this section, as Participating
11 Candidates twenty days after the last day of the Qualifying Period.

12 (C) ~~[At the end of the Qualifying Period, an Applicant Candidate shall file Seed~~
13 ~~Money contribution and Expenditure reports with their application for~~
14 ~~certification as a Participating Candidate.]~~

15 (D) A Participating Candidate shall comply with all requirements of the Open
16 and Ethical Elections Code and applicable City and state election law after
17 certification as a Participating Candidate and throughout the election cycle.

18 **Section 8. GUIDELINES AND RESTRICTIONS FOR CONTRIBUTIONS TO**
19 **AND EXPENDITURES OF PARTICIPATING CANDIDATES.**

20 (a) All money distributed to a Participating Candidate shall be used for that
21 Participating Candidate's campaign-related purposes in the election year in
22 which the money was distributed.

23 (b) A Participating Candidate shall limit total campaign Expenditures and
24 debts to the amount of money distributed to that Participating Candidate
25 from the Fund. A Participating Candidate shall not accept contributions or
26 loans from any other source.

27 (c) Within two weeks after the regular municipal election, a Participating
28 Candidate shall return to the Clerk for direct deposit into the Fund any
29 amount that is unspent or unencumbered by the date of the [municipal]
30 [regular local] election.

31 (d) A Participating Candidate shall not use revenues from the Fund for
32 personal use including:

- 33 (1) salary or payment to an individual unless that individual is providing

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- 1 **bona fide services to the campaign and is compensated at fair**
- 2 **market value;**
- 3 **(2) admission to a sporting event, concert, theater or other form of**
- 4 **entertainment unless part of a specific campaign activity;**
- 5 **(3) dues, fees, parking or gratuities at a country club, health club or**
- 6 **other recreational facility unless the costs are part of a specific**
- 7 **fundraising event;**
- 8 **(4) mortgage, rent or household utility payments for any part of a**
- 9 **personal residence;**
- 10 **(5) purchases of household food items or supplies; or**
- 11 **(6) purchase of clothing, other than items of de minimus value used in**
- 12 **the campaign.**
- 13 **(e) A Participating Candidate shall not use revenues distributed from the Fund**
- 14 **to:**
- 15 **(1) contribute to any other candidate, political committee or measure;**
- 16 **(2) support or oppose any candidate, political committee or measure not**
- 17 **in their race;**
- 18 **(3) use to repay any loans, debts or penalties;**
- 19 **(4) use to pay for consulting services to an individual unless the**
- 20 **individual is providing bona fide services to the campaign and is**
- 21 **compensated at fair market value; or**
- 22 **(5) use for out-of-state travel.**
- 23 **(6) the purchase of “alcoholic beverages” as that term is defined at §**
- 24 **13-2-2 ROA 1994.**
- 25 **(7) Any payment to a registered voter in exchange for that voter**
- 26 **agreeing to vote in an election.**
- 27 **(f) Additional guidance and clarification regarding permissible and prohibited**
- 28 **uses of the distribution, only as those are identified and provided for in the**
- 29 **City Charter and Code, may be provided in the City Clerk’s rules and**
- 30 **regulations.]**
- 31 **Section 9. CANDIDATE REPORTING REQUIREMENTS.**
- 32 **[Applicant Candidates shall file financial disclosures in accordance with**
- 33 **Article XIII, Section 4 of this Charter.]**

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1 ~~[The Clerk shall publish guidelines outlining permissible campaign-related~~
2 ~~Expenditures.~~
3 ~~Applicant Candidates shall file Qualifying Contributions with the Clerk during~~
4 ~~the Qualifying Period according to procedures developed by the Clerk. In~~
5 ~~developing these procedures, the Clerk shall use existing campaign reporting~~
6 ~~procedures and deadlines whenever practical.~~
7 ~~Participating Candidates shall also report Expenditures according to the~~
8 ~~campaign reporting requirements specified in the Election Code.]~~

9 Section 10. FUND CREATION - FUND USE.

10 (a) There is created in the City Treasury the "Open and Ethical Elections
11 Fund" solely for the purposes of:

- 12 (1) financing the election campaigns of Participating Candidates for
13 Covered Offices;
- 14 (2) paying administrative and enforcement costs of the Open and Ethical
15 Elections Code; and
- 16 (3) carrying out all other specified provisions of the Open and Ethical
17 Elections Code.

18 (b) The City Treasurer shall invest the Fund as other City funds are invested
19 and pursuant to Section 4-1-10 ROA 1994, and all income derived from the
20 Fund shall be credited directly to the Fund. Within 30 days after the end of
21 each fiscal year, the City Treasurer shall furnish the Mayor and Council a
22 report of all investment activity of the past year in connection with the
23 administration of the Fund. Remaining balances at the end of a fiscal year
24 shall remain in the Fund and shall not revert to the general Fund.

25 (c) Money received from the following sources shall be deposited directly into
26 the Fund:

- 27 (1) Qualifying Contributions that have been submitted to the Clerk;
- 28 (2) any recurring balance of unspent Fund money distributed to a
29 Participating Candidate who does not remain a Participating Candidate
30 through the municipal election period for which the money was
31 distributed;
- 32 (3) money that remains unspent or unencumbered by a Participating
33 Candidate following the date of the regular municipal election;

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- 1 (4) Seed Money that exceeds 10% of the applicable spending limit; and
- 2 (5) additional money appropriated by the Council based on
- 3 recommendations received by the Clerk and the City Attorney.
- 4 (d) One-tenth of 1% of the approved General Fund (Fund 110) appropriation
- 5 shall be reserved in the Fund to fund Participating Candidates for the 2007
- 6 regular municipal election and subsequent regular municipal elections as
- 7 provided in the Open and Ethical Elections Code.
- 8 (d) The Fund shall also be funded by voluntary contributions from members of
- 9 the public. Money in the Fund is appropriated to the Clerk to carry out the
- 10 purposes of the Open and Ethical Elections Code.

11 **Section 11. DETERMINATION OF FUND AMOUNT.**

- 12 (a) Once the Open and Ethical Elections Code is enacted, the Clerk shall
- 13 prepare and provide to the Mayor and Council an annual report
- 14 documenting, evaluating and making recommendations relating to the
- 15 administration, implementation and enforcement of the Open and Ethical
- 16 Elections Code.
- 17 (b) In the report, the Clerk shall set out the revenues received to date, the
- 18 expected costs to the Fund for the next election cycle and the amount of
- 19 any annual appropriation from the Council that will be required to meet this
- 20 need.

21 **Section 12. TIMING AND AMOUNT OF FUND DISTRIBUTION.**

- 22 (a) The Clerk shall distribute money from the Fund to Participating Candidates.
- 23 The Clerk shall distribute revenue within three business days of
- 24 certification. In the event that a Candidate's certification for public
- 25 financing or qualification by the County Clerk as a Candidate has been
- 26 challenged, the Clerk shall distribute funds to the Participating Candidate
- 27 within three business days of receiving notice that the certification and/or
- 28 qualification by the County Clerk as a Candidate has been upheld.
- 29 (b) The Clerk shall distribute the \$1.75 per registered City voter to Mayoral
- 30 Participating Candidates and \$1.00 per registered City voter residing in the
- 31 district in which the Participating Council Candidate desires to represent.
- 32 Notwithstanding the foregoing, in Council districts containing fewer than
- 33 40,000 registered voters, the Clerk shall distribute \$40,000 to each

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- 1 Participating Council Candidate, in lieu of \$1.00 per registered City voter
2 residing in the district.
- 3 (c) The amount of revenue to be distributed to a Participating Candidate shall
4 be reduced by an amount equal to the aggregate amount of Seed Money
5 contributions received by the Participating Candidate during the
6 Exploratory and Qualifying Periods [~~and by Qualifying Contributions~~
7 ~~received by the Participating Candidate during the applicable Qualifying~~
8 ~~Period~~].
- 9 (d) A Participating Candidate may withdraw as a Participating Candidate by
10 filing a written statement of withdrawal with the Clerk.
- 11 (e) If the withdrawn Participating Candidate continues to participate in the
12 election as a Non- Participating Candidate then:
- 13 (1) at the time the statement of withdrawal is filed, the candidate shall
14 deliver to the Clerk an amount of money equal to all monies distributed
15 to the candidate from the Fund after the candidate was certified as a
16 Participating Candidate plus interest of the total amount of monies
17 received at a rate of 12% per annum; and
- 18 (2) [~~the candidate shall still be required to abide by the spending limits set~~
19 ~~forth in the Open and Ethical Elections Code.~~]
- 20 (f) If a Participating Candidate is not certified as a candidate, in accordance
21 with applicable state and other City law, then the candidate shall deliver to
22 the Clerk an amount of money equal to all monies distributed to the
23 candidate from the Fund after the candidate was certified as a Participating
24 Candidate plus interest of the total amount of monies received at a rate of
25 12% per annum.
- 26 (g) If a Participating Candidate entirely withdraws from a race for a Covered
27 Office then he shall immediately return any amount to the Fund that is
28 unspent or unencumbered at the time he ceases to be a Participating
29 Candidate before a regular municipal election.
- 30 (h) If a Participating Candidate becomes unopposed following the distribution
31 of funds, the Participating Candidate shall be promptly given notice by the
32 City Clerk and shall be given three (3) business days after being notified to
33 return any unspent or unencumbered funds. Following the return of funds,

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1 the Participating Candidate becomes a privately financed candidate and is
2 no longer subject to the contribution and expenditure requirements of the
3 Open and Ethical Election Code.]

4 ~~[Section 13. INDEPENDENT EXPENDITURE DISCLOSURE REQUIREMENTS.~~
5 ~~A Person making an Independent Expenditure in an amount of \$100 or more or~~
6 ~~in an aggregate amount of \$100 or more shall comply with Article XIII, Section~~
7 ~~4 of the City Charter.]~~

8 Section 14. ADJUSTMENTS TO FUND DISTRIBUTION.

9 (a) Once the certification of participation for Participating Candidates for a
10 regular ~~[municipal]~~ [local] election has been completed, the Clerk shall
11 calculate the total amount of money to be distributed in the election cycle,
12 based on the number of Participating Candidates and the allocations
13 specified in Section 12 of the Open and Ethical Elections Code and shall
14 then distribute the Fund revenue within ~~[two]~~ [three] business days.

15 (b) If the allocation specified in Subsection A of this section is greater than the
16 total amount available for distribution, then the amounts to be distributed
17 to individual Participating Candidates shall each be reduced by the same
18 percentage as the reduction by which the total amount needed has been
19 reduced relative to the total amount available.

20 Section 15. RUN-OFF ELECTIONS.

21 (a) On the Friday after a ~~[municipal]~~ [regular local] election when the election
22 results are certified, the Clerk shall issue Fund revenue to each
23 Participating Candidate involved in a runoff election in the following
24 amounts:

- 25 (1) for Mayoral candidates ~~[\$0.60]~~ [\$1.00] per registered City voter; and
- 26 (2) for Council candidates ~~[\$0.33]~~ [\$.50] per registered City voter residing in
27 a Council district.

28 (b) Notwithstanding the foregoing, in Council districts containing fewer than
29 40,000 registered voters, the Clerk shall distribute ~~[\$13,200]~~ [\$20,000] to
30 each Participating Council Candidate, in lieu of ~~[\$0.33]~~ [\$.50] per registered
31 City voter residing in the district.

32 Section 16. COMMUNICATION OF PARTICIPATION STATUS TO VOTERS.

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1 Once a candidate is certified as a Participating Candidate, the Clerk shall
2 publish ~~[a statement on the Internet that the candidate is a Participating~~
3 ~~Candidate who has agreed to the terms and conditions of the Open and~~
4 ~~Ethical Elections Code.]~~ [the Participating Candidate's Certification on the City
5 Clerk's website along with the terms and conditions of the Open and Ethical
6 Election Code the Candidate has agreed to abide by.]

7 Section 17. ADJUSTMENTS FOR INFLATION AND POPULATION GROWTH.
8 The City Attorney and the Clerk shall review the dollar amounts specified in
9 the Open and Ethical Elections Code periodically. The City Attorney and Clerk
10 shall recommend any necessary adjustments to reflect inflation or population
11 change to the Council and Mayor to consider amendments to the Code.

12 Section 18. ADMINISTRATION - CLERK -- DUTIES.

- 13 (a) The Clerk with the assistance of the City Attorney shall adopt rules to
14 insure effective administration of the Open and Ethical Elections Code.
- 15 (b) The rules shall include procedures for:
 - 16 (1) qualifications, certification and disbursement of revenues and return of
 - 17 unspent Fund revenues;
 - 18 (2) obtaining Qualifying Contributions;
 - 19 (3) certification of a candidate's participation;
 - 20 (4) collection of revenues; and
 - 21 (5) return of Fund disbursements and other money to the Fund.
- 22 (c) The Clerk shall provide the public with educational materials relating to the
23 provisions of the Open and Ethical Elections Code.

24 Section 19. APPEALS.

25 The procedure for challenging a decision of the Clerk to grant, deny, or revoke
26 a Candidate's certification as a Participating Candidate is as follows:

- 27 (a) A Person aggrieved by the Clerk's decision may appeal to the Clerk within
28 three days of the decision. The appeal shall be in writing and shall set forth
29 the reasons for appeal;
- 30 (b) Within five days after an appeal is properly made, and after due notice is
31 given to the parties in dispute, the City Hearing Officer shall hold a hearing
32 whereby:
 - 33 (1) the appellant has the burden of providing evidence to demonstrate that

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- 1 the Clerk's decision was improper; and
- 2 (2) the City Hearing Officer shall rule on the appeal within three days after
- 3 the completion of the hearing;
- 4 (c) the parties in dispute may appeal the decision of the City Hearing Officer
- 5 [to the Board of Ethics and then to district court as provided by law] [~~by~~
- 6 ~~commencing an action in district court pursuant to New Mexico Rule of~~
- 7 ~~Civil Procedure 1-074~~]; and
- 8 (d) Participating Candidates whose certification of participation is revoked on
- 9 appeal may be required to return to the Clerk up to all money distributed
- 10 from the Fund. If the City Hearing Officer or court finds that an appeal was
- 11 made frivolously or to cause delay or hardship, the City Hearing Officer or
- 12 court may sanction the moving party by requiring the party to pay the
- 13 attorney's fees and administrative and/or court costs of the opposing
- 14 parties.
- 15 (e) For the purposes of this section, "parties in dispute" includes the City.

16 Section 20. PENALTIES - ENFORCEMENT.

17 The Clerk and Board of Ethics and Campaign Practices shall enforce the Open
18 and Ethical Elections Code pursuant to Articles XII and XIII of the City Charter
19 and pursuant to rules promulgated by the Clerk.

20 Section 21. AMENDMENTS.

21 The Open and Ethical Elections Code may be amended without requiring
22 compliance with Article VI of this Charter by ordinance adopted by a majority
23 plus two of the entire membership of the Council voting in favor of such
24 amendment or amendments, and said ordinance being otherwise governed by
25 Article XI of this Charter."

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

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

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

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