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Effective date:	12/27/2022		

Title: C/S Amending Articles, XII, XIII, And XVI Of The City Charter Relating To Elections And Public Campaign Financing (Davis, Peña, Bassan by request)

Sponsors: Pat Davis (By Request), Klarissa J. Peña (By Request), Brook Bassan (By Request)

Indexes:

Code sections:

Attachments: 1. O-40, 2. O-40 Approved Committee Substitute, 3. CS O-40Enacted

Date	Ver.	Action By	Action	Result
12/27/2022	3	City Clerk	Published	
12/19/2022	3	Mayor	Signed by the Mayor	
12/9/2022	2	City Council	Sent to Mayor for Signature	
12/5/2022	2	City Council	Passed	Pass
11/21/2022	2	City Council	Accepted with a recommendation Do Pass, As Substituted	
11/14/2022	1	Finance & Government Operations Committee	Substituted	Pass
11/14/2022	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass, as Substituted	Pass
10/24/2022	1	Finance & Government Operations Committee	Postponed	Pass
9/19/2022	1	President	Referred	
9/19/2022	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. C/S O-22-40 ENACTMENT NO. _____

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

ORDINANCE

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C/S Amending Articles, XII, XIII, And XVI Of The City Charter Relating To Elections And Public Campaign Financing (Davis, Peña, Bassan by request)

AMENDING ARTICLES, XII, XIII, AND XVI OF THE CITY CHARTER RELATING TO ELECTIONS AND PUBLIC CAMPAIGN FINANCING.

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

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

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

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

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

SECTION 1. Article XII, Section 9 of the City Charter is amended as follows:

“Section 9. INVESTIGATION.

(a) The Board or City Clerk may choose to ask for an investigation; to do this, it may temporarily employ or contract with investigators and require investigation by city staff assigned to the Board or by the Office of Inspector General upon acceptance of the complaint, or upon evidence or belief of fraud or a violation of the Charter. The Board or City Clerk shall direct and limit the scope and nature of all such investigations. No such investigation shall be undertaken unless it is specifically authorized and defined by the Board or City Clerk. For the purposes of this section, the term "allegations" means both any formal charges filed with the Board or City Clerk or initiated by the Board or City Clerk and other information raising a substantial question related to compliance with the Code of Ethics, the Open and Ethical Election Code, or the Election Code. Such investigation may relate to violation of the Code of Ethics, the Open and Ethical Election Code, or the Election Code.

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

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

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

"Section 1. DECLARATION OF POLICY.

Public disclosure and regulation of certain campaign practices will serve to increase public confidence in the integrity of government by informing the public of the qualifications of a candidate for elective office and of the possible sources of influence upon that candidate and of the financing of a campaign to influence the passage or defeat of a measure. The principle that the candidate assumes ultimate and complete responsibility for the conduct of the campaign is therefore incorporated in to this Charter and shall be implemented according to this Election Code.

Section 2. DEFINITIONS.

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

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

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

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

(e) "Candidate" means any individual who has (1) obtained a nominating petition from the City Clerk pursuant to Section 4(c)1.D. of this Election Code for the office of Mayor or Councilor, (2) filed an affidavit on a form approved by the City Clerk, stating that he or she is a candidate

for either the office of Mayor or City Councilor, (3) filed as a candidate for elected office as required by law, whichever first occurs, or (4) has received or solicited contributions or made expenditures of one thousand dollars ($1,000) or more or authorized another person or campaign committee to receive or solicit contributions or make expenditures of one thousand dollars ($1,000) or more for the purpose of seeking election to the office.

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

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

(h) "Contributions" means:

1. Monies, loans, debts incurred, obligations incurred, property in-kind, including the use thereof, or commercial or professional services:
   A. Incurred or received by a candidate, the candidate's treasurer, the Candidate Finance Committee, or a member thereof on behalf of the candidate, or by a Measure Finance Committee or a member thereof on behalf of the Committee. For the purposes of this Subsection, a debt or obligation shall be considered incurred at the time authorization is given or contract made for the debt or obligation.
   B. Not received by a person or entity named in Subparagraph A above, but expended or employed on behalf of a candidate or measure, where such monies, loans, debts incurred, obligations incurred, property in-kind, or commercial or professional services have been solicited or otherwise consented to by such committee or have been expended or employed in a manner or amount directed, authorized, either expressly, by implication, or consented to by such committee.
2. Contributions of property, including the use thereof, and contributions of commercial or professional services shall be attributed a cash value equal to their fair market value.
3. Notwithstanding the foregoing, none of the following shall be considered a contribution: a candidate's own services and property, other than cash; the use of a dwelling unit and residential premises incidental thereto for any campaign purpose and the provision of refreshments and entertainment in connection with such use; the services of the person

who is performing the duties of the candidate's treasurer; and the use of vehicles for any campaign purpose other than in connection with the performance of a commercial or professional service.

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

(i) “Coordinated Expenditure” means an expenditure that is made:

a. by a person other than the candidate or campaign committee;

b. at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party; and

c. for the purpose of:

i. supporting or opposing the nomination or election of a candidate; or

ii. paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot.

(j) “Covered Office” means the office of Mayor of the City of Albuquerque or the office of any City Councilor.

(k) “Disclaimer” means a notice that identifies the person(s) or organization(s) who paid for a communication and whether the communication was authorized by one or more candidates.

(l) “Disclosure reports” means statements filed by candidates and committees in the electronic campaign finance reporting system as required pursuant to Article XIII, Section 4.

(m) "Early Voter" means a voter who votes in person before election day, and has not been issued an absentee ballot at the time the voter presents himself at an early voting location.

(n) "Election" means any City of Albuquerque municipal election.

(o) “Electioneering Communication” means any audio or visual communication in any form that is broadcast or distributed by any means that:

(1) unambiguously refers to any candidate or ballot measure;

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(2) is broadcast, printed, mailed, delivered, or distributed within the 60 days preceding a regular or special election, or 45 days preceding a runoff election; and

(3) is broadcast to, printed in a newspaper, distributed to, mailed to, delivered by hand or otherwise distributed to an audience that includes members of the electorate for a covered office.

(p) “Express Advocacy” means an expenditure made by a person or group, other than a candidate or candidate’s committee, that advocates the election or defeat of a candidate or ballot measure, including all costs of designing, producing, or disseminating a communication that contains phrases such as “vote for”, “re-elect”, “support”, “cast your ballot for”, “[name of candidate] for [name of office]”, “[name of candidate] in [year]”, “vote against”, “defeat”, “reject”, or similar phrases, or other explicit references to a candidate or ballot measure that indicates intent to influence an election.

(q) "Expenditure" means the payment or furnishing of money or anything of value or the incurring or repayment of indebtedness or obligation, by or on behalf of any person, candidate or political committee in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including support of or opposition to a candidate or political committee or for reducing the debt of a candidate or political committee. Notwithstanding any other provision of the Charter, for the purposes of Election Code and the Open and Ethical Elections Code, the payment of legal fees to advise a candidate on compliance with campaign laws or regulations, and the payment of legal fees or court costs to represent a candidate or candidate committee in any action reasonably related to the campaign or election in which the candidate or committee has been named as a defendant, are expenditures that must be disclosed, but are not subject to any expenditure limits in the Charter.

(r) “Immediate Family” means the candidate’s spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, step-grandparent, stepchild, step-grandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, and the immediate family of the candidate’s spouse or domestic partner.

(s) “Independent Expenditure” mean any funds spent on express advocacy or electioneering communications that are made without the cooperation, consultation or coordination with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent

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

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

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

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

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

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

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

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

(3) office space.

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

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

Section 3. CANDIDATE DISCLOSURE.

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

Section 4. CAMPAIGN FINANCING.

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

(b) *One Bank Account Filing Requirements.*

1. Each candidate or the candidate's treasurer and each Measure Finance Committee shall establish one and only one campaign bank checking account for each election. The City Clerk shall issue a form to be submitted by campaigns and committees disclosing bank account information.
2. All contributions of monies received for the benefit of the candidate's campaign or the Measure Finance Committee shall be deposited in that account, and all disbursements shall be made from that account.
3. Each candidate and each Measure Finance Committee shall file with the bank at which the campaign checking account has been established a letter authorizing the release of information concerning that account to the Clerk and shall submit a copy of the letter of authorization to the Board. Upon the request of the Clerk, each candidate, the candidate's treasurer, or the chairperson or treasurer of each Measure Finance Committee shall provide to the Clerk all bank records, cancelled checks, and any other financial information relating to the campaign as may be requested by the Clerk.

(c) *Disclosure of Campaign Financing.*

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

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

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

   C. All expenditures made on behalf of the campaign, including any reimbursements and the nature thereof, and the name and address of the person or business to which payment was made.

      (A) Reporting of expenditures shall include for each expenditure including type and quantity of items purchased, names and roles of staff paid, names

of companies and materials produced, etc.

(B) The Campaign and Election Auditor, as provided for in Article XIII, Section 9 shall, at their discretion, request additional details of expenditures or contributions.

D. A person seeking to qualify to be on the ballot for the office of Mayor or Councilor shall include any person who has obtained a nominating petition form approved by the City Clerk, or who has received or solicited contributions or made expenditures of one thousand dollars ($1,000) or more or authorized another person or campaign committee to receive or solicit contributions or make expenditures of one thousand dollars ($1,000) or more for the purpose of seeking election to the office. The City Clerk shall issue an approved nominating petition only to the person seeking to be on the ballot. Such approved nominating petition forms shall state the name of the person and the city office for which such person is petitioning to qualify to be on the ballot. People who have sought to be on the ballot as described above, but who do not qualify for the ballot or do not file a declaration of candidacy are required to file as provided in this section by 5:00 p.m. on the second Monday in May, a report of all expenditures made and contributions received on or before the first Monday in May and not previously reported and to file a final report by 5:00 p.m. on the second Monday in November, a report of all expenditures made and contributions received on or before the first Monday in November and not previously reported.

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

F. The Purchasing Office shall maintain a list of all contributors to the campaign of any elected Mayor or Councilor and, for a period of one and one-half years following

the election of that Official, shall notify the City Clerk of any campaign contributors who form business dealings with the city, as defined in the preceding paragraph, and the City Clerk shall post that information (including: contribution amount, recipient and business relationship) on the city's website.

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

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

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

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

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

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

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

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(D) by 5:00 p.m. on the second Monday in July, a report of all expenditures made and contributions received on or before the first Monday in July and not previously reported;

(E) by 5:00 p.m. on the second Monday in August, a report of all expenditures made and contributions received on or before the first Monday in August and not previously reported;

(F) by 5:00 p.m. on the second Monday in September, a report of all expenditures made and contributions received on or before the first Monday in September and not previously reported;

(G) beginning on the second Monday in October, by 5:00 p.m. on every Monday thereafter before the regular election candidates shall file a report of all expenditures made and contributions received on or before the previous Friday and not previously reported;

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

(I) run-off candidates shall file statements as follows:

i. beginning on the first Monday following the regular election, by 5:00 p.m. on every Monday before the run-off election candidates shall file a report of all expenditures made and contributions received on or before the previous Friday and not previously reported; and

ii. beginning on the Friday before the run-off election, any contribution or pledge to contribute that is for five hundred dollars ($500) or more shall be reported to the City Clerk in a supplemental report on a prescribed form within twenty-four hours of receipt;

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

i. beginning on the first Monday following the County Clerk's first publication of the special election resolution, by 5:00 p.m. on every Monday before the special election reporting individuals shall file a

report of all expenditures made and contributions received on or before the previous Friday and not previously reported; and

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

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

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

D. In an election year, a public official who is not a candidate shall file biannual reports of expenditures made and contributions received or statements of no activity in accordance with the schedule provided for in Subsection A of this section.

E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

F. Except for candidates and public officials who file a statement of no activity, each reporting individual shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the reporting individual delivers a report to the City Clerk stating that:

(A) there are no outstanding campaign debts;

(B) all money has been expended in accordance with the provisions Section 4 of Article XIII, the Election Code;

(C) and the bank account has a zero balance.

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G. Each treasurer of a measure finance committee shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section until the treasurer files a report that affirms that the committee has dissolved or no longer exists and that its bank account has a zero balance.

H. A reporting individual who is a candidate within the meaning of the Election Code because of the amount of contributions the candidate receives or expenditures the candidate makes and who does not ultimately file a declaration of candidacy or a nominating petition with the City Clerk and does not file a statement of no activity shall file biannual reports in accordance with Subsection A of this section.

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

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

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

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

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

candidate for an office other than Mayor or Council, accept a contribution that is knowingly given on behalf of any person or entity who, at the time of the contribution, is in a contractual relationship with the City to provide goods or services to the City. The remedy for an unknowing violation of this subsection shall be the return of the contribution.

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

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

(1) Retained in the campaign or Measure Finance Committee banking checking account for a possible runoff election for that office,

(2) Returned to the person who made the contribution,

(3) Placed in the City's General Fund, or

(4) Given to a charity identified by the candidate.

The final campaign financing statement shall reflect the final disposition of such contributions.

(h) *Anonymous Contributions.*

(1) All anonymous contributions shall be disposed of by a candidate or the chairperson of a Measure Finance Committee either by placing the contribution in the City's General Fund or by giving the contribution to a charity.

(2) An anonymous contribution shall not be considered to be a contribution to or expenditure of the campaign; however, a record of all anonymous contributions shall be kept by the candidate or the candidate's treasurer, or by the chairperson or treasurer of the Measure Finance Committee and the receipt and disposition of every anonymous contribution shall be reported in the campaign financing disclosure statements required by subsection (c) of this section are filed. Such report must disclose the goods, services, monies, or other contributions received, its value, the date of receipt and the date and method of disposition.

(i) For the purposes of this section, contributions and expenditures include those contributions received and expenditures made by or on behalf of an individual at any time prior to the individual filing a Declaration of Candidacy for the office of Mayor or

Councilor through the time the final campaign financing disclosure statement is due, or by or on behalf of a Measure Finance Committee at any time prior to the relevant election through the time the final campaign financing disclosure statement is due.

(j) ***Campaign Finance Records.***

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

(2) Campaign Financial Records.

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

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

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

2) Record campaign loans as contributions, with subsequent repayment of loans credited against contributions.

3) Record returned contributions as credits against contributions.

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

(3) 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

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

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

Section 5. CAMPAIGN MATERIALS AND REQUIRED DISCLAIMERS.

(a) ***Campaign Materials.***

Each candidate and each chairperson of each Measure Finance Committee shall ensure

that an image of all broadly distributed campaign material used in the campaign is filed with the City Clerk's Office on or prior to the day the financial report disclosing the expenditure for said campaign material is due. Campaign materials shall be filed electronically in a manner prescribed by the City Clerk. If the campaign material is a video or radio broadcast, a copy of the video or radio broadcast shall be uploaded or a link to a copy of the video or radio broadcast shall be sent directly to the City Clerk and the Independent Auditor.

(b) ***Required Disclaimers.***

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

Section 6. MEASURE FINANCE COMMITTEES.

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

1. The exact name of the Committee;

2. The official address and phone number of the Committee;

3. The names of the officials of the Committee;

4. The purpose of the MFC including the measure(s) or candidate(s) supported or opposed by the MFC; and

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

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

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

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

The Board and Clerk shall make available electronically on its website, or physically by request, copies of the Board's Rules and Regulations, the Clerk's Rules and Regulations, and the City Charter of Albuquerque, revised to date, and require that each registered candidate and each registered Measure Finance Committee acknowledge in writing on a prescribed form familiarity with the terms of this Election Code, the Clerk's Rules and Regulations, and the Board's Rules and Regulations. Each candidate and chairperson of a Measure Finance Committee shall acknowledge understanding of the Election Code, the Clerk's Rules and Regulations, and the City Charter, and acknowledge responsibility for the campaign or committee. Each candidate and chairperson shall furnish an address and phone number at which the candidate or chairperson can be reached, and to which communications, including notifications of alleged violations or hearings, can be mailed or delivered, and agreeing that notice left at such address shall be deemed received by the candidate or chairperson.

Section 8. PRESERVATION OF RECORDS.

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

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

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

(a) The Board and City Clerk shall promulgate reasonable Rules and Regulations for their conduct and in aid of interpretation and enforcement of this Election Code, and amend

such Rules and Regulations as they may, from time to time, deem advisable; provided, that amendments to said Rules and Regulations shall not be made by the Board or City Clerk during the ninety days preceding an election. The current Rules and Regulations of the Board and City Clerk shall be made available in published form no later than sixty days prior to any election.

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

Section 10. ENFORCEMENT.

(a) Charges of Violations.

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

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

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

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

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

chairperson of the charge or charges shall not be required before the Board takes further action.

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

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

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

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

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

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

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

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

(1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of Article XIII, Section 4, and pays all penalties owed.

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

Section 11. NON-WAIVER OF PENALTIES.

Nothing herein set forth shall be construed to affect or otherwise diminish any penalties otherwise provided by law for violation of this Election Code or the Rules and Regulations promulgated by the Board or the Clerk, nor shall anything herein set forth prevent the Board from bringing to the attention of the proper authority any alleged violation coming to its attention which may be subject to other penalties.

Section 12. AMENDMENTS.

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

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

“Section 1. CITATION.

Sections 1 through 21 of this article may be cited as the "Open and Ethical Elections Code".

Section 2. LEGISLATIVE INTENT.

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

(A) Avoid both actual undue influence of large campaign donors and the appearance of undue influence in Council and Mayoral elections and decision-making;

(B) Diminish the public perception of corruption and strengthen public confidence in the governmental and election process;

(C) Provide well-qualified candidates with adequate funding to mount campaigns to encourage competitive Council and Mayoral elections so that the City’s residents have more choices about the leadership and direction of the City;

(D) Increase the accountability of elected officials to their constituents who elect them, as opposed to the contributors who fund their campaigns; and

(E) Insure that the City’s Council and Mayoral election process is fair, responsible and ethical.

Section 3. DEFINITIONS.

As used in the Open and Ethical Elections Code:

(A) APPLICANT CANDIDATE. A candidate, but not a write-in candidate, running for a Covered Office and who is seeking to be a Participating Candidate.

(B) APPLICABLE SPENDING LIMIT. The total amount a candidate may spend on a campaign as determined by the City Clerk’s Office. For a City Councilor, this amount is based on the number of registered voters in the district the candidate is running in. For the Mayor, this amount is determined by the number of registered voters in the City of Albuquerque. For a participating candidate, the applicable spending limit is the amount set for distribution from the Fund. Any seed money collected by an applicant candidate will be subtracted from the distribution from the Fund.

(C) CLERK. The City Clerk.

(D) CONTESTED ELECTION. A regular municipal election in which there is more than one candidate for a City Council or Mayor position.

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(E) COORDINATED EXPENDITURE. Any expenditure made with the cooperation, consultation or coordination with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent thereof. Any expenditure that is coordinated within the meaning of this paragraph is an In-Kind Contribution to the candidate or candidate's committee with whom or with which it was coordinated and the candidate must report the Coordinated Expenditure as an In-Kind Contribution.

(F) COVERED OFFICE. City Council or Mayor.

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

(1) unambiguously refers to any candidate; and

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

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

(4) ELECTIONEERING COMMUNICATION does not include:

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

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

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

(D) paid for by a candidate or candidate’s campaign committee.

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

opposition to a candidate, political committee or measure for or for reducing the debt of a Participating Candidate for nomination or election to a Covered Office.

(I) EXPLORATORY PERIOD.

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

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

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

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

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

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

(N) IN-KIND CONTRIBUTION. A good or service, other than money, having monetary value not to exceed more than $2,500.00, but not including an individual who volunteers his own personal service. Professional services, including legal services, accounting services, consulting services and similar services provided directly from the professional to the Applicant Candidate or Participating Candidate are permitted, provided no single In-Kind Contributor exceeds the $2,500.00 limitation herein and provided the total value of all In-Kind Contributions does not exceed 10% of the

applicable spending limit per regular or run-off election. Notwithstanding the foregoing, an Applicant Candidate or Participating Candidate may accept unlimited In-Kind Contributions in the following areas: 1) legal services provided directly from attorneys for the purpose of providing legal advice to comply with election laws and public financing laws. 2) professional services provided directly from the professional, including attorneys, experts and consultants, for the sole purpose of participating in a proceeding under the Code of Ethics, the Election Code, the Open and Ethical Elections Code, or the rules and regulations of the Board of Ethics and/or City Clerk, and 3) office space. Such In-Kind Contributions shall be reported as required by Article XIII, Section 4.

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

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

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

(R) PERSON.

- **a. a City resident;**
- **b. a labor organization, club, association or organization who have members who are City residents; or**
- **c. a corporation, limited liability company, firm, partnership, joint stock company or other entity conducting business in the City.**

(S) QUALIFYING CONTRIBUTION. A non-refundable donation of $5.00 in the form of cash,

check, debit card, credit card or money order payable to the Fund in support of an Applicant Candidate that:

a. **for the Mayoral race is made by a registered City voter and for a Council race is made by a registered City voter residing in the district in which the Applicant Candidate desires to represent;**
b. **Is made during the designated Qualifying Period and obtained through efforts made with the knowledge and approval of the Applicant Candidate;**
c. **is acknowledged by a receipt that identifies the contributor's name; and**
d. **identifies which Applicant Candidate the City resident supports.**

(T) QUALIFYING PERIOD.

a. **For Mayoral Applicant Candidates the Qualifying Period begins 8:00 a.m.199 days before the election, and ends 5:00 p.m. 136 days before the election; and**
b. **For Council Applicant Candidates, the Qualifying Period begins 8:00 a.m. 155 days before the election, and ends 5:00 p.m. 120 days before the election.**

(U) REGULAR LOCAL ELECTION. An election that is held the first Tuesday after the first Monday in November in odd numbered years.

(V) SEED MONEY. A contribution in support of an Applicant Candidate of no more than $250.00 per Person, except for the Applicant Candidate who can contribute up to $2,500.00, raised for the primary purpose of enabling Applicant Candidates to collect Qualifying Contributions and petition signatures the aggregate amount of which may not exceed 20% of the applicable spending limit. Seed Money may only be accepted during the Exploratory Period and the Qualifying Period. Seed Money contributed by the candidate to their own campaign may be donated prior to the exploratory period, or during the exploratory or qualifying period.

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

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

Section 4. TERMS OF PARTICIPATION - DECLARATION OF INTENT.

(a) An Applicant Candidate, choosing to obtain financing pursuant to the Open and Ethical

Elections Code, shall file a declaration of intent with the Clerk to participate as an Applicant Candidate for a Covered Office. The declaration of intent shall be filed with the Clerk prior to or during the Qualifying Period according to forms and procedures developed by the Clerk.

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

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

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

Section 5. QUALIFYING CONTRIBUTIONS.

(a) An Applicant Candidate for Mayor shall obtain Qualifying Contributions from a minimum of 1% of registered City voters.

(b) An Applicant Candidate for Council shall obtain Qualifying Contributions from a minimum of 1% of the City voters registered in the district that the Applicant Candidate desires to represent.

(c) No payment, gift or anything of value shall be given in exchange for a Qualifying Contribution.

(d) Audit.

(1) The Office of Internal Audit shall conduct audits on a percentage of qualifying contributions submitted to the City Clerk's Office throughout the qualifying period.

(2) Prior to the start of the exploratory period, the City Auditor shall develop an audit plan for the conduct of the audit for the election cycle. The City Auditor shall confer with the City Clerk's Office in regards to resources that may be required of that office.

(3) At the completion of every audit, written reports shall be submitted to the Board and the City Clerk's Office and shall be made available for public inspection.

Section 6. SEED MONEY AND IN-KIND CONTRIBUTIONS.

(a) An Applicant Candidate may accept Seed Money not to exceed $250.00 per Person.

(b) An Applicant Candidate may contribute up to $2,500.00 from the Applicant Candidate's personal funds for Seed Money.

(c) Seed Money shall be deducted from the revenues distributed to the Participating Candidate from the Fund.

(d) The aggregate amount of Seed Money received and spent by an Applicant Candidate shall not exceed an amount equal to 20% of the distribution from the Fund, or the Applicable Spending Limit to a Participating Candidate.

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

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

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

(h) Mayoral Applicant Candidates may accept Seed Money from 246 days before the

election through 136 days before the election. Council Candidates may accept Seed Money from 191 days before the election through 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 restrictions;

(5) otherwise met the requirements for obtaining financing pursuant to the Open and Ethical Elections Code;

(6) otherwise met any additional criteria for certification set forth in rules by the Clerk;

(7) been qualified as a Candidate by the County Clerk; and

(8) there are not pending challenges to the County Clerk's qualification of the Candidate.

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

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

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

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

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

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

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

(1) salary or payment to an individual unless that individual is providing bona fide services to the campaign and is compensated at fair market value;

(2) admission to a sporting event, concert, theater or other form of entertainment unless part of a specific campaign activity;

(3) dues, fees, parking or gratuities at a country club, health club or other recreational facility unless the costs are part of a specific fundraising event;

(4) mortgage, rent or household utility payments for any part of a personal residence;

(5) purchases of household food items or supplies; or

(6) purchase of clothing, other than items of de minimus value used in the campaign.

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

(1) contribute to any other candidate, political committee or measure;

(2) support or oppose any candidate, political committee or measure not in their race;

(3) use to repay any loans, debts or penalties;

(4) use to pay for consulting services to an individual unless the individual is providing bona fide services to the campaign and is compensated at fair market value;

(5) use for out-of-state travel;

(6) the purchase of “alcoholic beverages” as that term is defined at § 13-2-2 ROA 1994; or

(7) Any payment to a registered voter in exchange for that voter agreeing to vote in an election.

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

Section 9. CANDIDATE REPORTING REQUIREMENTS.

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

Section 10. FUND CREATION - FUND USE.

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

(1) financing the election campaigns of Participating Candidates for Covered Offices;

(2) paying administrative and enforcement costs of the Open and Ethical Elections Code; and

(3) carrying out all other specified provisions of the Open and Ethical Elections Code.

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

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

(1) Qualifying Contributions that have been submitted to the Clerk;

(2) any recurring balance of unspent Fund money distributed to a Participating Candidate who does not remain a Participating Candidate through the municipal election period for which the money was distributed;

(3) money that remains unspent or unencumbered by a Participating Candidate following the date of the regular municipal election;

(4) Seed Money that exceeds 10% of the applicable spending limit; and

(5) additional money appropriated by the Council based on recommendations received by the Clerk and the City Attorney.

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(d) One-tenth of 1% of the approved General Fund (Fund 110) appropriation shall be reserved in the Fund to fund Participating Candidates for the 2007 regular municipal election and subsequent regular municipal elections as provided in the Open and Ethical Elections Code.

(d) The Fund shall also be funded by voluntary contributions from members of the public. Money in the Fund is appropriated to the Clerk to carry out the purposes of the Open and Ethical Elections Code.

Section 11. DETERMINATION OF FUND AMOUNT.

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

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

Section 12. TIMING AND AMOUNT OF FUND DISTRIBUTION.

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

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

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

(d) A Participating Candidate may withdraw as a Participating Candidate by filing a written

statement of withdrawal with the Clerk.

(e) If the withdrawn Participating Candidate continues to participate in the election as a Non- Participating Candidate then:

(1) at the time the statement of withdrawal is filed, the candidate shall deliver to the Clerk an amount of money equal to all monies distributed to the candidate from the Fund after the candidate was certified as a Participating Candidate plus interest of the total amount of monies received at a rate of 12% per annum.

(f) If a Participating Candidate is not certified as a candidate, in accordance with applicable state and other City law, then the candidate shall deliver to the Clerk an amount of money equal to all monies distributed to the candidate from the Fund after the candidate was certified as a Participating Candidate plus interest of the total amount of monies received at a rate of 12% per annum.

(g) If a Participating Candidate entirely withdraws from a race for a Covered Office then he shall immediately return any amount to the Fund that is unspent or unencumbered at the time he ceases to be a Participating Candidate before a regular municipal election.

(h) If a Participating Candidate becomes unopposed following the distribution of funds, the Participating Candidate shall be promptly given notice by the City Clerk and shall be given three (3) business days after being notified to return any unspent or unencumbered funds. Following the return of funds, the Participating Candidate becomes a privately financed candidate and is no longer subject to the contribution and expenditure requirements of the Open and Ethical Election Code.

Section 13. ADJUSTMENTS TO FUND DISTRIBUTION.

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

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

Section 14. RUN-OFF ELECTIONS.

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

(1) for Mayoral candidates $1.00 per registered City voter; and

(2) for Council candidates $.50 per registered City voter residing in a Council district.

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

Section 15. COMMUNICATION OF PARTICIPATION STATUS TO VOTERS.

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

Section 16. ADJUSTMENTS FOR INFLATION AND POPULATION GROWTH.

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

Section 17. ADMINISTRATION - CLERK -- DUTIES.

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

(b) The rules shall include procedures for:

(1) qualifications, certification and disbursement of revenues and return of unspent Fund revenues;

(2) obtaining Qualifying Contributions;

(3) certification of a candidate's participation;

(4) collection of revenues; and

(5) return of Fund disbursements and other money to the Fund.

(c) The Clerk shall provide the public with educational materials relating to the provisions of the Open and Ethical Elections Code.

Section 18. APPEALS.

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

(a) A Person aggrieved by the Clerk's decision may appeal to the Clerk within three days of the decision. The appeal shall be in writing and shall set forth the reasons for appeal;

(b) Within five days after an appeal is properly made, and after due notice is given to the parties in dispute, the City Hearing Officer shall hold a hearing whereby:

(1) the appellant has the burden of providing evidence to demonstrate that the Clerk's decision was improper; and

(2) the City Hearing Officer shall rule on the appeal within three days after the completion of the hearing.

(c) the parties in dispute may appeal the decision of the City Hearing Officer to the Board of Ethics and then to district court as provided by law; and

(d) Participating Candidates whose certification of participation is revoked on appeal may be required to return to the Clerk up to all money distributed from the Fund. If the City Hearing Officer or court finds that an appeal was made frivolously or to cause delay or hardship, the City Hearing Officer or court may sanction the moving party by requiring the party to pay the attorney's fees and administrative and/or court costs of the opposing parties.

(e) For the purposes of this section, "parties in dispute" includes the City.

Section 19. PENALTIES - ENFORCEMENT.

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

Section 20. AMENDMENTS.

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

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

section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

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

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

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