

REGULATIONS OF THE ALBUQUERQUE CITY CLERK FOR THE OPEN AND ETHICAL ELECTIONS CODE

PURPOSE The purpose of these Regulations are to establish procedures that candidates shall follow under the Open and Ethical Elections Code, City Charter Article XVI. [Hereinafter referred to as “the Code”, with all citations referring to the Code unless otherwise noted]. The Clerk shall create forms, election calendars, timelines and other necessary documents to implement these regulations; in conformance with the Open and Ethical Election Code and these Regulations, and these documents and forms are not part of these Regulations.

AUTHORITY These Regulations are required by the Open and Ethical Elections Code.

APPLICABILITY These Regulations apply to all candidates for the offices of Mayor and City Council who chose to seek eligibility to receive public funds under the Open and Ethical Election Code but do not apply to candidates who do not qualify as participating candidates.

EFFECTIVE DATE These Regulations shall be effective on the date of the signature of the Chief Administrative Officer entered below.

PART A DEFINITIONS

Applicable Spending Limit means an amount that is equal to the amount of revenue distributed to the Participating Candidate from the Fund for a regular municipal election, allowable Seed Money contributions received by the Participating Candidate and any matching funds distributed to the Participating Candidate pursuant to Section 16 of the Open and Ethical Elections Code. (Section 3 (R), Section 6 (C)(E), Section 12 (B)(C) and Section 14). The applicable spending limit for a runoff election means an amount that consists only of the Participating Candidate’s pro rata share of the available funds paid to the Participating Candidate pursuant to Section 15 of the Open and Ethical Elections Code and any matching funds distributed to the Participating Candidate pursuant to Section 16 of the Open and Ethical Elections Code. (Section 15).

Applicant Candidate is a person who is running for City Council or Mayor and who is seeking to be a Participating Candidate and thereby becomes eligible for public funding of a campaign pursuant to the Open and Ethical Elections Code. An Applicant Candidate does not include write-in candidates.

Broadly Distributed shall mean any communication sent, delivered or transmitted to more than one hundred people.

Campaign Materials mean those materials defined in City Charter Article XIII, Section 2(c), which includes but is not limited to materials broadly distributed by any source such as printed material, telephone, television, radio, e-mail, internet

web site or mailings. Campaign Materials shall also include all Electioneering Communications as defined in the Open and Ethical Elections Code.

Contribution as defined under Article XIII of the City Charter also includes In-Kind Contribution, for purposes of the Code.

Declaration of Candidacy means the procedure required in Section 3-8-27 NMSA 1978.

Declaration of Intent is a statement by a person declaring their intent to participate as an Applicant Candidate seeking public financing under the Open and Ethical Election Code made in writing on a form provided by the City Clerk prior to seeking any Qualifying Contributions. Section 4.

Fund is the Open and Ethical Elections Fund required by City Charter Article XVI, Section 10, and may be designated as the “ABQ OEE FUND”.

In-Kind Contribution means goods or services, other than money, having a monetary value not to exceed five percent of the annual salary for such office being sought at the time of filing the Declaration of Candidacy, but does not include the value of personal services volunteered by individuals. [Section 3 (K)]. 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. The five percent of the annual salary limitation applies to each separate In-Kind Contribution. [Section 6 (E)].

Participating Candidate means a candidate who chooses to obtain financing pursuant to the Open and Ethical Elections Code and who is certified to participate by the City Clerk.

Regular Municipal Election is the period of time that begins the first day a voter may cast a ballot, whether absentee or in-person, for the purpose of determining when a communication becomes an Electioneering Communication under the Code. The date under the Code for the Regular Municipal Election is thirty-five days before election day; the first day absentee ballots may be mailed.

Qualifying Contribution means a donation of \$5.00 to the City of Albuquerque Open and Ethical Elections Fund or “ABQ OEE FUND”, in support of an Applicant Candidate.

Qualifying Period for Mayoral Applicant Candidates means February 16 through March 31 at 5:00 p.m. in the years in which a Mayoral election is held and for City Council candidates May 1 through May 31 at 5:00 p.m. in the years in which a City Council election is held. [Section 3 (Q)].

Seed Money means cumulative contributions of no more than \$100 per person and \$500 of the Applicant Candidate’s own money raised for the primary purpose of enabling the Applicant Candidate to collect Qualifying Contributions and petition signatures. Seed Money may not exceed 10% of the applicable

spending limit and may be raised only during the exploratory and qualifying periods. [Section 3 (R), Section 6 (D)].

PART B THE EXPLORATORY PERIOD

1. Exploratory Period For Mayoral candidates, the Exploratory Period is from January 1 through February 15 of the year in which a Mayoral election is held. For City Council candidates, the Exploratory Period is from March 15 through April 30 of the year in which a City Council election is held. [Section 3 (G)].

2. Seed Money and In-Kind Contributions During Exploratory Period Seed Money may be raised during the Exploratory Period and the Qualifying Period but not thereafter. In-Kind Contributions may be received from the beginning of the Exploratory Period through the day the regular municipal election is held, or day of the runoff election, if applicable. [Section 6 (A - G)].

3. Expenditures During Exploratory Period The only funding sources that may be used during the Exploratory Period for expenditures related to campaign activities for the City office being sought are Seed Money and In-Kind Contributions. The primary purpose of Seed Money is to assist Applicant Candidates in obtaining Qualifying Contributions. ~~However, Seed Money and In-Kind Contributions may be used for other incidental purposes such as paying off previous campaign debt.~~ Any Fund distribution of public money to a Participating Candidate may only be used for the current campaign, pursuant to the limitations of the Code. [Section 8].

4. Seed Money Seed Money may not exceed 10% of the applicable spending limit. Because the applicable spending limit cannot be determined at the time Seed Money must be reported, the City Clerk will provide estimates to Applicant Candidates at the beginning of Exploratory Period. Any Seed Money received by a candidate or his/her representative shall be deducted from any fund distributions to the Applicant Candidate. Any Seed Money in excess of the 10% of the applicable spending limit (the "Excess Seed Money") at the time of the distribution of revenue from the Open and Ethical Elections Fund by the City Clerk shall also be deducted from the amount of the distribution. Any Seed Money collected in excess of the 10% limit may also be a violation of the Act. [Section 3 (R)]. Contributors of Seed Money shall be residents of the City of Albuquerque [Section 3 (O)].

5. In-Kind Contributions In-Kind Contributions may be received from the beginning of the Exploratory Period through the day the regular municipal election is held, or day of the runoff election, if applicable. [Section 6 (E)]. In the event any disclosure report shows the cumulative value of In-Kind Contributions exceeds 10 % of the applicable spending limit, such excess shall be paid by the candidate from public funds to the City Clerk. Any individual In-Kind Contribution that exceeds 5% of the annual salary for the office being sought (the "Excess Contribution") shall also be paid by the candidate to the City Clerk. Any In-Kind Contributions in excess of those allowed in the Act may also result in a violation

of the Act. People who contribute In-Kind Contributions are not required to reside in the City of Albuquerque nor are they required to be registered to vote in the City of Albuquerque. [Section 6 (C)].

6. Reporting

a. The First Disclosure Report for Seed Money and In-Kind Contributions and Training Applicant Candidates shall submit a Declaration of Intent prior to collecting any Qualifying Contributions. At the time the Declaration is filed, the First Disclosure Report for Seed Money and In-Kind Contributions must be filed with the City Clerk. The Report shall be submitted electronically. The Declaration of Intent may be filed at the beginning of the Exploratory Period up through the Qualifying Period. The Applicant Candidate or his/her designated representatives shall attend a reporting procedures training class conducted by the City Clerk. A notarized affidavit signed by the Applicant Candidate shall be hand delivered to the City Clerk's office by noon on the day the first Disclosure Report for Seed Money and In-Kind Contributions is due. The reporting period for the first report shall be from the beginning of the Exploratory Period until 5:00 p.m. on the day prior to the day the first disclosure report is required to be filed with the City Clerk. [Section 4 (A) - (D)].

b. The Second Disclosure Report The second report disclosing contributions of Seed Money and In-Kind Contributions shall be filed at the same time the final Qualifying Contribution report is due. The Disclosure Report shall be filed electronically. A notarized affidavit signed by the Applicant Candidate shall be hand delivered to the City Clerk's office by noon on the day the Second Disclosure Report for Seed Money and In-Kind Contributions is due. The day the Second Disclosure report is due for Mayor is April 1 and for City Council is June 1 if those dates are on a City working day, otherwise, the next City working day. The second report shall be the final report for Seed Money. The reporting period for the second report shall be from the end of the reporting period for the first report until 5:00 p.m. on the day prior to the day in which the Second Disclosure Report is required to be filed. [Section 7 (C)].

c. Subsequent Reports All expenditures, including but not limited to expenditures of Seed Money and the receipt of In-Kind Contributions not included in the reporting period for the first and second disclosure reports shall be reported in the disclosure of campaign financing as required under City Charter Article XIII, Section 4 (c) (the Election Code). The reporting period for each of the campaign disclosure reports under the Election Code shall be from the end of the reporting period for the previous required disclosure report until 5:00 p.m. on the day prior to the day the report is filed with the City Clerk. [Section 9 (B and C)].

d. Payment of Funds to City Participating Candidates shall pay within two weeks following the regular election to the City Clerk any amount of money distributed to Participating Candidates from the Fund and/or Seed Money that is unspent or unencumbered. The final campaign disclosure report filed by the Participating Candidate shall show the amount of unspent Seed Money and any unspent distributions from the Fund as well as the amounts refunded by the candidate to the City Clerk. [Section 8 (C)].

e. Runoff Election Funds Participating Candidates in the regular City Election who are required to participate in a runoff election shall also be Participating Candidates for purposes of the runoff election. Failure to participate shall result in the candidate being subject to the same spending limits to which Participating Candidates would be subject in the runoff election. Those spending limits are in an amount equal to the revenues to which Participating Candidates would be entitled to receive from the Fund for the runoff. Excess funds from the regular election shall be refunded by the Participating Candidate to the City Clerk pursuant to Section 8 (C) of the Open and Ethical Elections Code. The applicable spending limit for the runoff election shall be the Participating Candidate's pro rata share of the available funds paid to the Participating Candidate pursuant to Section 15 of the Open and Ethical Elections Code and any matching funds distributed to the Participating Candidate pursuant to Section 16 of the Open and Ethical Elections Code. [Section 15].

f. Runoff Election Reports The reporting requirements for Participating Candidates in a runoff election include filing campaign disclosure reports by noon on the following dates:

- 1) The Friday of the fourth week preceding the runoff election;
- 2) The Friday of the second week preceding the runoff election;
- 3) Daily campaign disclosure statements are due from any candidate incurring any expenditure or receiving a contribution of over \$500.00 any time after 5:00 p.m. the Tuesday preceding the election shall file a disclosure statement with the City Clerk by 5:00 p.m. of the following day;
- 4) The Friday immediately preceding the runoff election;
- 5) The Monday immediately preceding the runoff election;
- 6) The seventh day after the election (which may also be the final statement); and,
- 7) A final statement not earlier than the seventh day nor later than the forty-fifth day after the election.

7. Contents for reporting Seed Money and In-Kind Contributions Electronically

The report required for disclosing Seed Money and In-Kind Contributions shall list the name, street address, phone number, occupation and employer of the contributor. The address of the employer shall be provided. If the contributor is self-employed a business address shall be given or a designation that the business is at the same address as the contributor's residential address. For In-Kind Contributions, the report shall show the name, street address of the contributor providing the In-Kind Contribution and a detailed description of the goods and/or services provided and the fair market value of the goods or services at the time the In-Kind Contribution was made. Contributions from business entities and city contractors are prohibited by Article XIII, Section 4 (f) of the City Charter. If a contribution of Seed Money is from an organization or corporation or other entity, not prohibited from contributing under Article XIII of the Charter; and, other than an individual City resident (as defined in Article XVI, section (3) (O), the City Clerk may request additional information from the Applicant Candidate showing membership and where business is conducted. [Section 3 (P) (3)].

Part C QUALIFYING CONTRIBUTIONS

1. The Declaration of Intent Applicant Candidates shall submit a Declaration of Intent prior to collecting any Qualifying Contributions. Qualifying Contributions may not be collected during the Exploratory Period. Qualifying Contributions may only be collected after the beginning of the Qualifying Period. Qualifying Contributions are \$5.00 contributions collected by the Applicant Candidate which are paid to the Fund and not retained by the Applicant Candidate. The Declaration of Intent may be filed beginning on the First Day of the Exploratory Period and no later than 5:00 p.m. on the last day of the Qualifying Period. If the last day of the Qualifying Period falls on a City observed holiday or a weekend, the last day shall be extended to 5:00 p.m. of the next City working day. Applicant Candidates shall file a detailed contribution and expenditure report regarding Seed Money and In-Kind Contributions with the City Clerk at the time of filing a Declaration of Intent [Section 4 (B)].

2. The Qualifying Contribution Form All Qualifying Contributions shall be listed on the Qualifying Contribution receipts provided by the City Clerk. [Section 3 (P) (3)].

3. Filing Requirements The Qualifying Contributions shall be submitted to the City Clerk along with the receipts provided by the Clerk. The receipt must be completely filled out with the name of the contributor, street address, the amount contributed and the date the contribution was made.

If a candidate chooses to collect Qualifying Contributions along with petition signatures, both the petition form and the Qualifying Contribution receipt must be completed. However, if a registered voter fills out the two forms concurrently, the address on the petition form may be used by the Clerk to verify the registration of the signer for both the petition and the receipt. The signer of the form and receipt

may just sign the receipt, and state "Petition Signed", print their name, the date and sign the receipt, and not provide their address a second time. The candidate must still complete their portion of the receipt. The petition Form and the receipt must be returned to the Clerk together or the receipt and contribution may not be able to be verified and counted by the Clerk.

A notarized affidavit signed by the Applicant Candidate shall be hand delivered to the City Clerk along with the original Qualifying Receipt forms signed by the contributors and Applicant Candidate or his/her representative, and all Qualifying Funds before 5:00 p.m. at the time of the filing deadlines. [Section 7 (C) and (D)].

4. Filing Deadlines On each Friday of the Qualifying Period after March 1, for Mayoral Applicant Candidates and after May 15, for Council Applicant Candidates the candidates shall report their Qualifying Contributions by turning in their receipts and contributions to the City Clerk. Partially completed receipt books may be completed and turned in at the next filing deadline. The receipts and contributions are due at the Clerk's Office by noon of each Friday If no Qualifying Contributions have been received by the Applicant Candidate by the applicable filing deadline, Applicant Candidates shall report to the City Clerk that no Qualifying Contributions have been received. All contributions to date must be reported and submitted to the City Clerk. The final Qualifying Contribution report shall be filed no later than noon on the City working day immediately following the expiration of the Qualifying Period. The final Qualifying Contribution report shall show all Qualifying Contributions received by the Applicant Candidate or his/her representatives during the entire Qualifying period. [Section 9 (B) and (C)].

5. Contents of Qualifying Contribution Report The Qualifying Contributions Form shall include the following information.

a. The Date the Qualifying Contribution Was Received The date the contribution was received must be within the Qualifying Period. For purposes of determining whether a Qualifying Contribution was made during the Qualifying Period, the date of the Qualifying Contribution must also be after the time the Applicant Candidate filed his or her Declaration of Intent. The date the contribution was received by the Qualifying Candidate or his/her representatives shall be the date attributed to the contribution, regardless of the date written on the check or money order. All disclosure reports shall indicate the date cash was received by the Qualifying Candidate or his/her representatives. [Section 3 (P) (2) (3) (4)].

b. The Name and Residential Address of the Contributor The name and residential address of the contributor shall be the same as shown on the New Mexico Secretary of State's voter registration rolls for precincts within the City of Albuquerque for Applicant Candidates for Mayor or within the Applicant Candidate's City Council District for Candidates for City Council. The combined petition and receipt process described in Paragraph 3 above may be followed. The receipt for the Qualifying Contribution shall include the statement that the Qualifying

Contribution was made with the contributor's own funds and that the contributor understands that the purpose of the contribution is to qualify the Applicant Candidate for Public funding and that nothing of value was received in return for the contribution. A post office box address shall not be a sufficient address to meet the requirements of this paragraph. Qualifying Contributions not meeting the requirements of this paragraph shall not be counted toward the required number of Qualified Contributions necessary to qualify an Applicant Candidate as a Participating Candidate. [Section 3 (P)].

c. Verification of Qualifying Form Information Verification of accuracy of information submitted by the candidates on Qualifying Forms is optional and left to the discretion of the City Clerk. Spot checks or complete verification of each form may occur.

6. Qualifying Contribution Requirements All Qualifying Contributions shall be a donation of exactly five dollars (\$5.00). No other sum will be accepted as a Qualifying Contribution or be counted toward the required number of Qualifying Contributions. The Clerk shall accept Qualifying Contributions from registered voters who are also City vendors because Qualifying Contributions are not prohibited contributions under Article XIII Section 4 (f) of the City Charter. Qualifying contributions in the form of checks or money orders must be made payable to the order of the City of Albuquerque Open and Ethical Elections Fund or "ABQ OEE FUND" and shall contain the name of the Qualifying Candidate on the face of the check or money order. [Section 3 (P)].

7. Determining the Required Number of Qualifying Contributions The number of qualifying contributions that shall be required for the office of Mayor shall be one percent of the number of voters registered within the City of Albuquerque as shown on the voter registration rolls of the New Mexico Secretary of State and the Bernalillo County Clerk as of February 1 of the year in which the election for Mayor is held. The number of qualifying contributions that shall be required for each of the positions of City Councilor shall be one percent of the number of voters registered within the City Council District to which the Applicant seeks election as shown on the voter registration rolls of the New Mexico Secretary of State and the Bernalillo County Clerk as of April 15 of the year in which the election for the City Council position is held. [Section 5 (A) (B)].

8. Additional Report/Receipts Required At the time each Qualifying Contribution report is due, the Applicant Candidate shall have submitted to the City Clerk copies of receipts provided to each contributor that identify the contributor's name, residential address and date of the contribution. A receipt for each contributor listed in the Qualifying Contribution report signed by the contributor and the Applicant Candidate and/or their representative shall be submitted by the Applicant Candidate at the time each Qualifying Contribution report is submitted. The Applicant Candidate with their signature on each receipt certifies that all such contributions were made with his/her knowledge. Contributions not accompanied by the receipt provided by the City Clerk shall not

be counted toward the required number of Qualifying Contributions necessary to qualify an Applicant Candidate as a Participating Candidate. [Section 3 (P)].

9. Submission of Qualifying Contributions Applicant Candidates shall submit Qualifying Contributions to the City Clerk, in the sum of \$5.00 each when submitting each of the Qualifying Contribution reports. [Section 7(C) and Section 3 (P)].

10. Certification of Participating Candidates for Public Financing The City Clerk shall certify as Participating Candidates those Applicant Candidates who meet the requirements of the Open and Ethical Elections Code and have submitted an Application for Certification as a Participating Candidate on April 1, for Mayoral candidates and June 1, for Council candidates. The City Clerk shall provide notice to all Applicant Candidates as to whether or not they have been certified as a Participating Candidate. Such notice shall be posted in the office of the City Clerk and sent by certified mail to the Applicant Candidates. Certification as a Participating Candidate shall not be a substitute for the candidates filing requirement of Section 3-8-27 NMSA 1978 or the certification of candidate's by the City Clerk required by Section 3-8-27 G NMSA 1978. Certification as a Participating Candidate does not eliminate or modify candidate qualification requirements of the City Charter. [Section 7 (A) (B)].

PART D ADDITIONAL REPORTING REQUIREMENTS

1. General Reporting Requirements All contributions received and expenditures made by a candidate shall be reported pursuant to City Charter Article XIII, Section 4 (c) and City Charter Article XII, Section 5, when applicable. All contributions, shall be subject to the contribution and reporting requirements of City Charter Article XIII. These reporting requirements are in addition to the reporting requirements set forth in the Open and Ethical Elections Code and these Regulations. [Section 9. (A) (B) (C)].

2. Reporting Cumulative Contributions All reports required in this Regulation shall include the cumulative amounts contributed by each contributor for all reporting periods.

3. Previous Election Debt and Reporting The Declaration of Intent requires that Applicant Candidates agree that any money received from the Open and Ethical Elections Fund shall not be used to retire a prior campaign debt. ~~However, contributions received by an applicant candidate prior to the Exploratory Period, Seed Money, as an incidental but not primary purpose, and In-Kind Contributions may be used to retire prior campaign debt. All contributions received for the payment of debt from past campaigns and all expenditures made for the payment of debt from past campaigns shall be reported pursuant to City Charter Article XIII, Section 4 (c) and of City Charter Article XII, Section 5 when applicable and shall be subject to the contribution limits of City Charter Article XII, Section 4 (e).~~ [Section 4 (D)].

4. Runoff Election – Final Campaign Disclosure Report Campaign disclosure report filed by the Participating Candidate after the runoff election shall show the amount of all unspent and unencumbered Seed Money and revenues from the Open and Ethical Elections Fund and shall disclose all payments of refund payments to the City Clerk required by the Open and Ethical Elections Code and these Regulations.

PART E PERMISSABLE CAMPAIGN RELATED EXPENDITURES

1. Salary or other payment to those providing bona fide services, including but not limited to consulting, polling, communication and advertising services to the campaign, provided that such person is compensated at a fair market value.

2. Admissions to sporting events, concerts, theater or other forms of entertainment for the purpose of conducting campaign activity.

3. Dues, fees, parking or gratuities at a country club, health club or other recreational facilities where such costs are a part of a specific fundraising event.

4. Purchases of food, beverages and/or supplies used exclusively for a campaign fund raising event, ~~but not including alcoholic beverage.~~

5. Minor Cost Items Purchase of clothing or other items of de minimus value used in the campaign. Clothing shall be a valid campaign expense only when it has a campaign message as part of the clothing or is used as a uniform for campaign staff and/or volunteers.

6. Campaign Materials [See definition in Part A].

7. Compensation to Campaign Staff

8. Communication Systems Purchase or lease of computers, telephone systems and other related communication devices used in campaign activities. [Section 8 (D) (1) – (6)].

9. Campaign headquarters and offices and expenditures related to such headquarters and offices such as, security deposits, utilities, television reception, and janitorial services.

10. Part H, 11, of these Regulations controls how all property purchased is disposed of after the election.

PART F COORDINATED EXPENDITURES