Rules & Regulations
Of the
Board Of Ethics
&
Campaign Practices

For The
Code of Ethics
Of the
City Charter

Office of the City Clerk
P.O. Box 1293
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RULES AND REGULATIONS OF THE BOARD OF ETHICS AND CAMPAIGN
PRACTICES RELATING TO THE ELECTION CODE OF THE CITY CHARTER

Section 1 Pursuant to the authority granted by the City Charter of the City of Albuquerque, the Board of Ethics and Campaign Practices (hereinafter referred to as the "Board") issues the following Rules and Regulations for its conduct, and for interpretation and enforcement of the Election Code (Article XIII) of the City Charter.

In the event that these Rules and Regulations are in conflict with the provisions of the Election Code of the City Charter, the provisions of the Election Code shall prevail.

Terms and words, which are used but not defined in these Rules and Regulations, shall have the same meaning as defined or used in the Election Code with the exception that an "Official" is any Candidate or the chair of a measure finance committee and "Candidate" shall mean any person who has (1) obtained a nominating petition from the City Clerk pursuant to Election Code 4 (c) 1. D; (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 Councillor or (3) filed a declaration of candidacy for elected office as required by law, whichever first occurs.

Section 2 WHERE TO FILE AND ADDRESS INQUIRIES; ORIENTATION.

A Questions concerning election matters are to be directed to the Office of the City Clerk. Questions concerning financial records and statements may be directed to the Office of the City Clerk or to the Campaign and Election Auditor, if retained.

B All campaign materials and all declarations, statements, forms and any other documents required by the Election Code or these Rules and Regulations to be filed with or submitted to the Board shall be filed in the Office of the City Clerk in accordance with the times specified in the Election Code or in these Rules and Regulations.

C It is the responsibility of the person filing or submitting such campaign materials or documents to request and receive from the Office of the City Clerk a signed receipt showing the date and time of filing or submission.

D All documents required by the Election Code or these Rules and Regulations to be filed with or submitted to the Board shall be complete in all respects. Documents submitted will be considered incomplete unless all of the enumerated information is provided. Incomplete submissions will not be considered to be timely filed unless the information is provided on a corrected submission filed prior to the times specified in the Election Code or these Rules and Regulations. Any documents requiring the address of a contributor shall be deemed to be incomplete if the contributor's residential street address is not provided.

E Before any City election with Candidates and subsequent to the filings of Declarations of Candidacies, the Board will hold an orientation for Candidates and their treasurers. Similarly, the Board may hold an orientation for Measure Finance Committees.

Section 3 CAMPAIGN FINANCING

A Contributions not reported due to amount must be recorded in order that cumulative contributions over the minimum amount for reporting can be reported.

B Anonymous contributions must be reported as such and cannot be used in the campaign. Pursuant to Election Code Section 4 (g), anonymous contributions shall not be considered contributions for purpose of the candidate's or Measure Finance Committee's campaign. Anonymous contributions may only be disposed of by giving the contribution to a charity certified as a tax-exempt organization under IRS Code 501 (c) (3) or to the City's general fund. Anonymous contributions shall be reported as to the dollar amount received under the contributions portion of the finance disclosure report. Under the expenditure portion of the finance disclosure report the same anonymous contribution shall be reported along with the name of the charity that received the anonymous contribution or a statement that the contribution was given to the City's general fund. Anonymous contributions do not include contributions received by a host pursuant to Section 4 (j) of the Election Code.

C Campaign Contributions Other than Cash

1 General Definition of Property and Services

"Property" and "services" are as defined by Section 2(g) of the Election Code, and further as follows:

In general, volunteered personal services provided without compensation by any individual who volunteers on behalf of a Candidate or a Measure Finance Committee are not contributions, except when the volunteered personal services are commercial or professional services. However, the payment by any person of compensation for the personal services of another person, if those services are then rendered without charge to a Candidate or Measure Finance Committee, will be considered a contribution and must be reported as such. The following examples, not meant to be exclusive, are provided to illustrate this section:

Example 1: Person X, a CPA, volunteers to be the campaign treasurer for a Candidate. The value of Person X's personal services is not a contribution because Section 4 of the Election Code requires a Candidate to have a treasurer who is not the Candidate. However, if Person X uses an employee of X's firm to perform those services and the employee is compensated either in addition to

or as a part of the employee's normal compensation, the value of the services is a contribution and must be reported as such.

Example 2: Person Y, a contractor, volunteers to assemble and post signs on behalf of a Candidate from materials provided by the Candidate. Several of Person Y's employees assist Person Y in assembling and posting the signs during work hours when the employees are not busy with their regular duties. The value of Person Y's services is not a campaign contribution, unless the services are commercial or professional services; however, the value of the employees' services is a contribution and must be reported as such.

Example 3: Person Z, an attorney, volunteers to provide legal services in representing the Candidate in a matter arising out of the campaign. The value of Person Z's personal services is a contribution and must be reported as such as Person Z is providing a professional service.

2 Determination of Fair Market Value

In general, any property contributed to or used by a Candidate or Measure Finance Committee for less than adequate and full consideration, unless specifically exempted by the Election Code, will be considered a contribution. Such contributions must be valued at fair market value, which is the value that such property or the use thereof is commonly offered to the general public if sold commercially or at the cash value a willing buyer would pay to a willing seller if not sold commercially. The burden of providing accurate information to the satisfaction of the Board is the sole responsibility of the Candidate or the Measure Finance Committee receiving the contribution. The following examples, not meant to be exclusive, are provided to illustrate this section:

Example 1: Landlord A provides campaign office space to Candidate X at the rate of $200.00 per month. Such space has been offered to the general public at the rate of $350.00 per month, but Landlord A has not been able to lease the space at that rate. Landlord A has made a contribution at the rate of $150.00 per month to Candidate X. If Landlord A allowed Candidate X to use the space at no cost, a contribution at the rate of $350.00 per month would have been made. For rental periods of less than one month, the contribution may be prorated over thirty days.

Example 2: Printer A provides campaign literature, including bumper stickers, signs, brochures and various other items, to all Candidates and Measure Finance Committees at a rate of twenty-five percent less than the rate charged to all of Printer A's regular customers. Printer A will be considered to have made a contribution equal to the amount of the discount. Similarly, if Printer A provides a discount to only one Candidate or Measure Finance Committee, a contribution will have been made equal to the amount of the discount.

D Office Space In the event that office space is utilized for the campaign, a Candidate for elective office or the chairperson of the Measure Finance Committee, whichever may be the case, shall cause to be filed with the Board, at the time that the campaign financing disclosure statements required by Section 4 of the Election Code are to be filed, a notarized statement from the person or business providing the office space, specifying the fair market value of the office space together with a statement of the actual cost, if any, of the office space to the Candidate or Measure Finance Committee.

The difference between the fair market value of the office space and the actual cost to the Candidate or the Measure Finance Committee shall be considered to be an in-kind contribution and shall be accounted for and reported as such.

Section 4. ADVERTISING

A Advertising

1 As part of each campaign financing disclosure statement, every Candidate for elective office and every chairperson of a Measure Finance Committee shall submit a detailed accounting of all advertising expenses, including but not limited to costs for print and broadcast media, billboards, all signage, bumper stickers, T-shirts, buttons, and other such campaign materials. Lump sum disbursements made to advertising or other agents must be reported in detail as those funds are expended or committed.

2 In the event that specialized advertising, such as signs on hot air balloons, motor vehicles, and other display spaces is utilized for the campaign, a Candidate for elective office or the chairperson of the Measure Finance Committee, whichever may be the case, shall account for and report the fair market value of the use of the balloon, motor vehicle, or other display space as an in-kind contribution.

B Signs A Candidate for elective office or the chairperson of the Measure Finance Committee, whichever may be the case, shall cause to be filed with the Board, at the time that the campaign financing disclosure statements required by Section 4 of the Election Code are to be filed, a statement setting forth the following:

1 The number, types and sizes of all signs purchased by the campaign, together with the costs of each. Signs built by volunteers shall be reported and the costs of materials shall be included in the report. For purposes of this section, signs shall include post-election signs, such as "thank you" signs.

2 The number, types and sizes of all signs received as contributions by the campaign, together with the fair market value of each. The report identifying signs shall specify the expenditures that pertain to the signs.

3 In the case of billboards, a notarized statement from the person or business providing the billboard specifying the fair market value of the sign together with a statement of the actual cost, if any, of the sign to the Candidate or Measure Finance Committee. The difference between the fair market value of the sign and the actual cost to the Candidate or the Measure Finance Committee shall be considered an in-kind contribution and shall be accounted for and reported as such.

C Campaign Materials

1 Each Candidate and each chairperson of each Measure Finance Committee shall ensure that all campaign materials specify the name of the sponsor who authorized the printing or distribution of such campaign material and the name and address of the establishment that printed or otherwise created the campaign materials; provided, that the name and address of the printing establishment is not required to be specified in a newspaper advertisement.

2 Each Candidate and each chairperson of each Measure Finance Committee shall promptly file with the Board a copy of each campaign material used in the campaign upon such material being printed or distributed.

Section 5 ADVISORY OPINIONS

A The Board shall issue advisory opinions to any Official pursuant to the following procedures.

1 The Subcommittee A subcommittee of the Board shall review advisory opinion requests from Officials. The subcommittee shall consist of the Chair and Vice Chair of the Board and a third member of the Board who shall be designated by the Chair on an ad hoc basis. The subcommittee shall make recommendations to the entire Board on each opinion request.

2 The Official shall file a request for advisory opinion with the City Clerk on a form approved by the City Clerk.

3 The subcommittee may require the Official requesting an opinion to provide additional information and to appear before the subcommittee to respond to questions related to the request.

4 The Board shall review all recommendations from the subcommittee. The Official requesting an opinion may attend such review hearing. The Board may require the Official requesting the opinion to answer questions or provide additional information or documentation at the review hearing. The Board may modify the recommended advisory opinion submitted by the subcommittee.

5 Each advisory opinion shall be issued only after a majority of the entire membership of the Board has voted in favor of the advisory opinion.

B Confidentiality, Public Hearings and Public Record

1 The request for an advisory opinion shall remain confidential and shall not be a public record until the request and recommendations of the subcommittee are heard by the Board.

2 The meetings of the subcommittee shall not be open to the public. The review hearing on advisory opinions by the Board shall be an open meeting.

3 All advisory opinions approved by the Board shall be filed with the City Clerk and shall be a public record. The City Clerk shall index the advisory opinions by subject matter and date.

C Advisory Opinion Requirements

1 The Official shall file a request for advisory opinion with the City Clerk on a form approved by the City Clerk.

2 The request for an opinion shall be about the conduct of the Official making the request, not that of some other person.

3 The request shall be only about prospective conduct, not past or present actions.

4 The request must be about a real or potential conflict the requesting Official is facing.

5 All material facts must be revealed in the request.

6 The Official who is issued an advisory opinion is the only one who may use the opinion as a defense.

7. The Board may include in the advisory opinion that the Official must take particular actions or refrain from certain conduct in order to be eligible to use the advisory opinion as a defense to any future complaint.

D Advisory Opinions as a Defense

1 An Official who receives an advisory opinion may rely on the opinion under the following conditions. If a complaint is filed against that Official based on the

same facts that are the basis for the opinion request, the Official may raise the advisory opinion as a defense in his response to the complaint or any portion of the complaint. The Board shall determine if the opinion was followed and whether the complaint is based on the same facts revealed in the opinion request. If both are found, the Board shall dismiss the complaint or that portion of the complaint that pertains to the advisory opinion.

2 In the event the Board finds that material facts were omitted by the Official in requesting the advisory opinion, that the Official did not follow the advisory opinion, or that the complaint involves material facts other than those that are the basis of the advisory opinion, the Board shall not dismiss the complaint solely on the basis of the advisory opinion, however the Official may use the advisory opinion as part of his defense.

3 Advisory opinions may be used by both Complainants and Respondents as precedence, but such opinions are not binding on the Board unless it is an opinion found by the Board to have issued to and followed by the Respondent pursuant to paragraph D 1 of this section.

Section 6 ENFORCEMENT

A Complaints and Violations

1 A complaint alleging a violation of the Election Code or these Rules and Regulations shall be made in writing by the filing of a notarized statement attesting to the truth of its contents on a form approved by the City Clerk. The complaint shall include documentation as to time, place, facts, and the names of any witnesses to the alleged violations. Complaints and answers to complaints shall be verified. The Board will not hear a complaint that is not verified. A Respondent's failure to timely file a verified answer may be construed by the Board, depending on the totality of the circumstance, as an admission of allegations. A sample form of verification is available at the Office of the City Clerk.

2 The complaint shall specify the provision or provisions of the Election Code or these Rules and Regulations alleged to have been violated and provide a clear and concise statement of what events took place that the complainant believes violated the provision or provisions of the Election Code or these Rules and Regulations cited in the complaint. No complaint shall be accepted for filing unless it is signed, notarized, and verified, and unless the documentation referred to above and the statement of the provision alleged to have been violated or reason for the complaint is presented at the same time the complaint is offered for filing. Complaints may be accompanied by verified affidavits pertaining to material elements of the complaint.

3 Limitations The Board will not set for hearing any complaint charging a campaign violation alleged to have occurred more than one hundred twenty [120] days prior to the date the complaint is filed unless the facts and documentation supporting the charges alleged in the complaint were not public knowledge or available for

public inspection within that time frame. But in no event shall the Board hear a complaint alleging campaign violations in which the alleged violation occurred more than one year in the past unless the complainant also alleges fraud or purposeful misrepresentation on the part of the Respondent to conceal the conduct that is the subject of the complaint.

4 All complaints shall be filed with the Office of the City Clerk, who in turn will immediately deliver a copy of the complaint to each member of the Board and each Respondent. After reviewing the complaint at a preliminary hearing the Board shall either accept the complaint for hearing or reject the complaint and notify the complainant in writing of the rejection and the reasons therefore and the complainant's right to appeal.

B Summary Dismissals

Upon receipt of a Complaint by the City Clerk, the Clerk shall send a copy of the Complaint with all attachments to each member of the Board along with the names of the Board members who will be on the review committee established hereafter. Any Board member who requests that the Complaint be considered at a preliminary hearing shall so notify the Clerk within ten days of that Board member's receipt of the Complaint. If the Clerk receives such notice, the Clerk shall schedule a preliminary hearing and the summary procedure provided hereafter shall not apply to the Complaint. When no Board member requests that the Complaint be heard at a preliminary hearing, complaints filed pursuant to these Regulations shall be reviewed by a Review Committee that shall consist of the Chair and two other Board members designated by the Chair to determine whether the complaint states a violation of the Code of Ethics. Designation of the two board members shall be by alphabetical rotation by last name of the Board members. If a Board member is not available, the Chair may designate the next Board member on the alphabetical list. If the three Board members agree that no violation of the Code of Ethics is stated in the Complaint, the Complaint shall be dismissed without a preliminary hearing. The three board members shall not be required to meet to make their decision. The City Clerk shall compile the decisions of the three Board members and when all three agree on dismissal, the Clerk shall prepare an order of dismissal, which only the Chair shall be required to sign. The Complainant shall be entitled to appeal the decision by filing a notice of appeal with the City Clerk within ten calendar days after Complainant's receipt of the notice of dismissal. Upon receipt of a notice of appeal filed within the required time, the City Clerk shall schedule a preliminary hearing. The Respondent shall be given notice of all actions taken pursuant to this section. The City Clerk shall provide all Board members a copy of the complaint and the order of dismissal at the time of dismissal.

C Response For Preliminary Hearing

Respondents may file a statement with the Board explaining why the complaint fails to state a violation of the Election Code. Respondents shall be given twenty (20) calendar days notice of the preliminary hearing. The Respondent's statement shall be filed with the City Clerk ten (10) calendar days prior to the preliminary hearing. The City Clerk

shall provide the Complainants and Board members with the Respondent's statement three (3) City working days prior to the preliminary hearing.

D Preliminary Hearing

1 A preliminary hearing shall be held by the Board for the purpose of deciding whether to accept a complaint. The Board's decision shall be based on findings that the factual statements made in the complaint, taken as being true, establish that Respondent has violated the provision or provisions of the Election Code or these Rules and Regulations that are cited in the complaint.

2 Complainants and Respondents and their representatives shall, at the request of the Board, address the Board at the preliminary hearing. Such presentations shall be limited to discussion of whether the complaint contains sufficient factual allegations to support a finding that a violation of the Election Code occurred. No testimony shall be accepted and no argument about the accuracy of the facts alleged in the complaint shall be accepted at this hearing. The Board shall also consider the complaint, Respondent's response to the complaint made pursuant to section 6 B and any other documentation provided at the request of the Board.

3 Reasons for Dismissing a Complaint At a preliminary hearing, the Board may dismiss a complaint if any one of the following is found or for such other reason as may be determined by the Board.

a The Board has no jurisdiction over the subject matter specified in the complaint or over the Respondent.

b The time in which a complaint could be filed has run.

c The conduct alleged in the complaint, if true, would not constitute a violation of the Election Code.

d The complaint on its face is frivolous, groundless, or brought for the purpose of harassment.

e The subject of the complaint has become moot.

f The Respondent had obtained an advisory opinion concerning the identical facts alleged in the complaint and Respondent complied with the advisory opinion.

4 Appeal A complainant who is aggrieved by the Board's rejection of the complainant's complaint may file an appeal to the District Court. Such appeal shall be filed within five days of Complainant's receipt of the final order of the Board.

5 The Board shall promptly set hearing dates for complaints not rejected.

6 Persons required to testify before the Board shall be served with a subpoena issued by the City Clerk's office and signed by the Chairman of the Board or his designee. Complainants and Respondents shall request issuance of subpoenas through the City Clerk's office in a timely manner.

E Consent Order/Settlement Process

1 At any time after the filing of the complaint, the Respondent may offer to settle the complaint by admitting to the allegations in the complaint and requesting a settlement conference with the staff of the Board. Based on the settlement conference, the staff shall prepare a proposed settlement agreement that shall be submitted to the Board. The settlement agreement shall state the sections of the Election Code and/or these Rules and Regulations violated, the action taken or to be taken by the Respondent to correct the violation and proposed sanctions, if any, upon Respondent.

2 Upon receipt of a proposed settlement agreement, the Board shall meet to determine if it will accept the settlement agreement. Board acceptance of a settlement agreement shall be by a majority vote of those Board members in attendance. Upon acceptance, the Board shall issue a consent order that shall be provided to all parties. The review of the settlement agreement and vote on the consent order shall be conducted at a public hearing. Testimony shall not be allowed at such hearing nor shall argument of the parties be accepted. The Respondent shall attend the hearing to confirm his acceptance of remedial measures, if any, to be taken by Respondent and sanctions imposed. The consent order shall be a final order concluding the case. The settlement agreement approved by the Board and the consent order shall be public records. In the event a settlement agreement is rejected by the Board, such settlement agreement may not be used as evidence in any subsequent hearings.

F Investigations For the purposes of these Rules and Regulations, the term "allegations" means any formal charges filed with the Board and any other information raising a substantial question related to compliance with the Election Code which [-~~six~~-] [+<u>four</u>+] or more members of the Board vote to investigate.

1 Investigation of Allegations

a Formal Charges

(1) Formal charges are those charges or complaints brought before the Board pursuant to Section 7, Article XII, and City Charter and filed in accordance with these Rules and Regulations. Formal charges also include those charges brought by the Board on its own initiative.

(2) By an affirmative vote of at least [-~~six~~-] [+four+] members of the Board, the Board may determine to have an investigation of any formal charge prior to or during any hearing that the Board may hold relative to the formal charge.

(3) Decision on any such charges which the Board votes to investigate shall be held in abeyance pending investigation.

b Other information

(1) Any member of the Board may request that the Board authorize an investigation of any information regarding compliance with the Election Code coming to the attention of such member other than as a formal charge.

(2) Such an investigation shall be authorized only upon an affirmative vote of at least [-~~six~~-] [+four+] members of the Board.

c Scope of Investigation The scope of any investigation of allegations authorized by the Board shall be specifically defined by the Board prior to the investigation being undertaken.

2 Selections and Retention of Investigators

a If the Board determines, by an affirmative vote of at least four members of the Board, to investigate allegations concerning compliance with the Code of Ethics, the Board may utilize the Office of Internal Audit and Investigations, City staff assigned to the Board or temporarily employ or contract with investigators. In selecting and retaining investigators to investigate such allegations the Board is not bound by the procurement procedures of the City of Albuquerque, however, any such selection and retention shall be accomplished in accordance with the procedures in these Rules and Regulations. Investigation assignments to the Office of Internal Audit and Investigations and City staff assigned to the Board require no procurement procedure and may be accomplished by a vote of at least four members of the Board.

b If the Board has determined, by an affirmative vote of at least four members of the Board, to investigate allegations concerning compliance with the Election Code by using a private entity or individual, the Board shall select an investigator in accordance with the following procedure:

(1) If sufficient time is available, the Board shall seek written proposals by issuing a request for proposals. The request for proposals shall specify the services required, all terms and conditions applicable to providing the services, all evaluation factors, and instructions and information to proposers relative to the preparation and submission of proposals.

(2) If the Board determines that sufficient time is not available to issue a request for written proposals, the selection of an investigator shall be accomplished through such competition as is practicable under the circumstances.

(3) The selection of an investigator shall be determined by majority vote of those Board members in attendance.

(4) The selection of an investigator shall be documented, and any agreement with an investigator shall be reduced to writing and signed by the investigator and the Chairperson of the Board, attested by the City Clerk, and filed in the office of the City Clerk. An investigator selected by the Board shall be retained by the Board for whatever length of time the Board determines is necessary for the investigation of the allegations.

G Answers shall include a response to each allegation in the Complaint and shall be filed with the City Clerk by all Respondents within fifteen days after the Respondent receives notice from the City Clerk that the Board has accepted the complaint at a preliminary hearing. Each Respondent shall send a copy of his/her answer to each Complainant by first class mail and file a certificate of mailing with the City Clerk certifying that such mailing occurred on or before the date the answer was filed with the City Clerk.

H Hearings in conducting hearings, all parties shall be afforded an opportunity for a full and fair hearing. In this regard, the Board shall follow these procedures:

1 Parties The party filing a complaint with the Board shall be referred to herein as the "Complainant" and the party responding to alleged violations of the Election Code or these Rules and Regulations shall be referred to herein as the "Respondent."

2 Notice

a The Board shall give at least fourteen (14) days written notice of the hearing to each party stating the time and place of the hearing.

b The notice of hearing shall contain a brief description of the matter to be heard so that all participants have an opportunity to prepare for the hearing.

c The Board shall require that the parties provide in advance a written statement of all issues to be addressed, a list of proposed witnesses, a brief statement of the nature of each witness's testimony, and copies of all documentary evidence to be introduced at least ten (10) days prior to the scheduled hearing. One copy of each item required pursuant to this paragraph shall be provided to the City Clerk to the attention of the Board, and one copy to each opposing party. Failure of a Complainant to

comply fully with this paragraph shall result in a dismissal of the complaint with or without prejudice at the Board's discretion in view of a totality of the circumstances. Failure of a Respondent to comply fully with this paragraph may result, based on a totality of the circumstances, in an admission of all alleged charges in the complaint. Parties objecting to authenticity of proposed exhibits must make an objection in writing to the Office of the City Clerk at least three (3) days prior to the scheduled hearing and shall provide a copy of the objection to opposing parties simultaneously. A party's failure to make a timely objection to the authenticity of opposing party's exhibits shall result in the admission of those exhibits.

3 Continuances · Requests for continuances shall be made, in writing, at least seven (7) days prior to the hearing, and shall be delivered to the Office of the City Clerk to the attention of the Board.

4 Evidence

a The Board shall afford all parties an opportunity to present oral or documentary evidence and argument on all issues involved, except that irrelevant, immaterial and unduly repetitious evidence shall be excluded. It is the policy of the Board that testimony and information presented during the hearing must have a direct and substantial bearing on the case at hand.

b Hearsay testimony shall be admissible subject to the other limitations on admissibility contained in these rules, provided that anonymous statements shall not be admissible.

c The Board shall base its decision on evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Each violation of the Election Code or these Rules and Regulations found by the Board shall be supported by at least some evidence that is admissible in a court of law.

5. Hearing Procedure

a · The Chairperson of the Board shall act as the presiding officer at the hearing unless he/she is unavailable or wishes to delegate this duty, in which case the Board members shall select a presiding officer. The presiding officer shall

(1) Determine the admissibility of evidence and testimony;

(2) Make rulings on procedural issues; and

(3) Be responsible for the Board's written ruling in each case.

(4) Issue an administration subpoena for the appearance of

a person at a hearing or for the production of documents, or both. When the Board has authorized an investigation, pertinent documents may be required to be produced to the investigator at other than a Board meeting.

(5) Request the City Attorney to apply for a Court order compelling compliance with an administrative subpoena or for a Court order requiring the giving of the testimony or production of documents.

(6) The presiding officer may impose reasonable limits on the number of witnesses to be heard and on the nature and length of the testimony or examination of persons appearing at such hearings.

(7) The presiding officer may set time limits for presentation of opening and closing statements.

(8) The presiding officer may prohibit repetitive testimony.

b Should an action of the presiding officer challenged by another Board member, and should the presiding officer disagree with the challenge, the issue will be decided by a majority vote of the Board members present.

c The Board may, but is not required to recognize any agreements on facts and issues between the parties and eliminate certain facts not in dispute in defining the issues to be heard.

d Prior decisions by the Board on the same issue will generally be followed and the parties are urged to refer to prior rulings on identical or similar issues. Prior decisions are available at the City Clerk's Office. The City Clerk shall index all Board case decisions by subject and date.

e The Board may request clarification by the Complainant of a complaint prior to any hearing, request that certain facts be examined initially in order to determine whether such facts exist as will support the allegations to be heard, or make any other rulings that are procedural, limiting, dispositive, or otherwise, which are in accordance with the law as applied to the facts at issue.

f Any party may be represented by representatives.

g The Board may dismiss a complaint after hearing evidence if it finds that the Respondent committed the violation due to an oversight, Respondent has come into compliance voluntarily and the Board determines that no sanction is required or when the Complainant does not appear at a hearing, but only if the Board determines that it would be unfair to the Respondent not to have the opportunity to examine the Complainant.

h In the absence of the Board's decision to proceed in a different manner, notice of which shall be given to the parties at least three (3) days in advance of the hearing, the sequence of the hearing shall be as follows:

(1) Opening Statement of Issues The Complainant and then the Respondent will present statements of issues involved in the case and outline the case that will be presented.

(2) Complainant's Presentation of its Case The Complainant's case will first be presented to the Board. Witnesses for the Complainant will be called, sworn, and questioned on their involvement in or knowledge of the case. Following each witness's testimony, the Respondent will have the opportunity to question the witness. Board members will then have the opportunity to question the witness on matters related to his/her testimony. Follow-up questioning by the Complainant will be allowed at the discretion of the presiding officer. This procedure will be followed for each of the Complainant's respective witnesses.

(3) Presentation of Respondent's Case Respondent's presentation shall follow Complainant's and the same format as the presentation of Complainant's case shall apply.

(4) Rebuttal Testimony Following presentation of the Respondent's position, the Complainant will be allowed to present rebuttal testimony at the discretion of the presiding officer. Such testimony shall be brief and specifically address the issues brought forth in the Respondent's presentation. No new issues shall be raised.

(5) Closing Statements At the conclusion of the case presentations and rebuttal testimony, the Complainant and Respondent will each make his/her closing statements. The closing statements should briefly review the issues presented and the desired outcome. The Complainant will then have the opportunity to make a final statement, which shall be limited to issues brought forth in the Respondent's closing statement.

(6) Decision Any decision or opinion of the Board, including findings of fact, which shall consist of a written statement of the facts relied on to support the decision of the Board, shall be given to each party by certified mail or personal service, and shall be filed in the Office of the City Clerk.

(7) Record The following records of the Board's proceedings shall be kept:

a A full record of the hearing by sound recording (which shall be retained for one year after the final decision is issued);

b All documents of other items considered and received as evidence; and

c Any decision or opinion of the Board.

I **Fines**

1 Pursuant to the Election Code, the Board may, after due hearing, impose on a Candidate or chairperson of a Measure Finance Committee a fine not to exceed the maximum set by state law, $500, for each violation of the Election Code or these Rules and Regulations or issue a public reprimand or do both.

2 Notwithstanding Subsection H 1 of this Section, fines are automatically imposed and public reprimands are issued for failure to file, late filing or incomplete filing of any report, statement or other document required by the Election Code or these Rules and Regulations. When a campaign finance report is incomplete, 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, using the procedures provided in Section 6 B of these Rules and Regulations.

3 For each of the six required Disclosure Statements of Campaign Financing, failure to file a required statement by its deadline for filing, the filing of an incomplete statement, and failure to provide copies and information regarding advertising and signs which is complete as required are each considered to be a separate violation of the Election Code and these Rules and Regulations.

4 Except as provided in Subsection (d) 5 of this Section, the automatic fine for each violation is $100. The total of the automatic fines for violations of the Election Code or these Rules and Regulations shall not exceed $500 for any required filing date.

5 The automatic fine for failure to appear before the Board at the mandatory meeting concerning campaign financial records scheduled between noon on the Friday immediately preceding the election and the day of the election is $500.

6 A supplemental fine of $300 per filing date may be levied for failure or refusal to file any required document after action, in the form of fine, reprimand or otherwise has been taken by the Board pursuant to any provisions of the Election Code or these Rules and Regulations.

7 Written notice of all fines shall be given to the Candidate or chairperson

of a Measure Finance Committee by the Office of the City Clerk.

8 All fines are due when levied and shall be paid to the City of Albuquerque by depositing the amount of any such fine in the Office of the City Clerk. Interest will be assessed at the maximum rate allowed by state law on any fine that is not paid by the thirty-first day following the date that the fine is imposed. For the purposes of this Section, the date of imposition of an automatic fine is the date of the violation.

9 The Board may alter an automatic fine for reasons it considers compelling.

10 Any automatic fine imposed pursuant to these Rules and Regulations without a hearing may be appealed to the Board by filing a written appeal in the Office of the City Clerk but not later than ten days after receipt of the notice of the imposition of the fine.

11 Limitation on Source of Funds to Pay Fines. A candidate, the chairperson of the Measure Finance Committee or any other obligated person subject to a fine pursuant to the Election Code and these Rules and Regulations shall not use contributions received by such candidate or the Measure Finance Committee to make payment of any fine assessed under the Election Code or these Rules and Regulations. Payment of fines may not be included as an expenditure for purposes of Election Code section 4 (f), the calculation of unexpended contributions.

J Communications After a complaint has been filed, none of the parties or their representatives may communicate on an ex parte basis with the Board or any Board member on any matter pertaining to the complaint. All communications pertaining to the complaint shall be sent to the office of the City Clerk.

K Board Initiated Charges Notwithstanding any other provision in this Section, the Board may, on its 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 the Election Code or of these Rules and Regulations.

L Registration of Measure Finance Committees Pursuant to Section 6 of the Election Code, when knowledge is received of the formation and existence of any Measure Finance Committee, the Board shall furnish registration materials to the Measure Finance Committee. The Measure Finance Committee shall register within five days from its receipt of the notification. Section 6 of the Election Code shall be administered as follows. When knowledge is received by the City Clerk, any Board Member or any City Official about an unregistered Measure Finance Committee, such person shall notify the City Clerk who shall notify the chair of the Board. The City Clerk shall notify the Measure Finance Committee to register. Such notification shall be signed by the Chair of the Board. The Measure Finance Committee shall respond to the notification by registering with the

City Clerk or providing a written explanation of why it should not be required to register. The response or failure to respond shall be presented to the entire Board which shall determine whether a complaint should be initiated against the Measure Finance Committee for non-compliance with the Election Code. Notice shall be provided to the Measure Finance Committee ten days in advance of such Board meeting.

M Mandatory Meeting Concerning Campaign Financial Records

1 During the period between noon on the Friday immediately preceding the election and the day of the election, each Candidate or the Candidate's treasurer, and the chairperson or treasurer of each Measure Finance Committee, shall appear before the Board at a time and place designated by the Board (hereafter, the "Pre-Election Meeting"). At the designated time and place, the campaign financial records of each Candidate and each Measure Finance Committee shall be submitted to the Board for inspection and/or audit. Any charge of violation of the Election Code or these Rules and Regulations arising out of or pertaining to any financial disclosure statements or any other document required to be filed on or before the Friday immediately preceding the election shall be reviewed by the Board at the Pre-Election Meeting as though it were a preliminary hearing. The three day notice required by the City Charter for the Pre-Election Meeting shall constitute notice for any preliminary hearing on complaints based on such financial disclosure statements or other document required to be filed.

2 At the Pre-Election Meeting the Board and its auditor shall be entitled to ask each Candidate and Candidate's treasurer and the chairperson and treasurer of each Measure Finance Committee for clarification and additional documentation concerning all campaign financial disclosure statements or other documents required to be submitted to the Board. Each Candidate, treasurer and chairperson shall be prepared to discuss the contents, or omissions of any campaign information, material, report, statement or other document required to be filed prior to the Pre-Election Meeting. Such inquiry and the responses thereto shall not be considered a hearing on a complaint or as an answer or response to a complaint, provided however that the Board shall be entitled to bring charges based on the information or lack of information received at the Pre-Election Meeting.

3 In the event that any charge is brought by the Board against a Candidate or a Measure Finance Committee as a result of the Pre-Election Meeting such action shall be deemed to be acceptance of a complaint for hearing as though such determination had been made at a preliminary hearing. Written charges shall be mailed to the Candidate or chairperson of the Measure Finance Committee and the procedural rules of these Rules and Regulations shall apply thereafter.

Section 7 CAMPAIGN FINANCE REPORTING

A Campaign Materials "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, electronic or telephonic transmissions or similar written material used in a campaign by a candidate or a Measure Finance Committee. Campaign Materials include but are not limited to television, radio, telephone and Internet campaign communications as defined in Section 7 B 2 below.

B Reporting Campaign Materials and Disclosure Requirements

1 **Identification of Expenditure** The campaign materials submitted to the City Clerk shall include a report identifying the expenditure listed on the campaign finance report that pertains to the campaign material submitted.

2 Television, Radio, Telephone and Internet Campaign Communications. Whenever a candidate, candidate finance committee or Measure Finance Committee authorizes or otherwise causes to be made any communication by television, radio, and telephone or on the Internet, advocating the election or defeat of a clearly identified candidate or measure on the ballot, such communication shall be a "Campaign Communication". The text of such Internet communication and the printed transcription or audio recording of such radio or telephone communication shall be submitted to the City Clerk in the same campaign finance reporting period in which the expenditure or authorization for such Campaign Communication was made. A copy of the television communication shall be provided to the Board by videotape or digital videodisk. For purposes of this Regulation, Campaign Communication includes the solicitation of contributions for a candidate or Measure Finance Committee. Telephone communications include automated telephone calls including but not limited to "auto dial" devices and telephone communications made by telephone operators for each telephone communication made to more than twenty-five people.

C Disclosure Required for Television Radio, Internet and Telephone Campaign Communications. Each television, radio, telephone and Internet campaign communication shall clearly state the following: (1) if paid for and authorized by a candidate or a candidate finance committee or their agents, that the communication has been paid for by such candidate or candidate finance committee; (2) if paid for by other persons, including but not limited to a Measure Finance Committee, that the communication is paid for by such other person and authorized by such candidate or candidate finance committee, or (3) if the communication is not authorized by a candidate or the candidate finance committee or their agents, the name and permanent street address, or telephone number or World Wide Web address of the person or Measure Finance Committee who paid for the communication and state that the communication was not authorized by any candidate or candidate's committee.

1 Disclosure of Production Company The requirement of Election Code, City Charter Article XIII, Section 5, that the name and address of the establishment that created the campaign materials shall apply to all television, radio, telephone and

Internet Campaign Communications. "Establishment" shall mean any commercial entity, including but not limited to production companies and media consultants, whose normal activities include the development or creation of communication material of a similar nature to the campaign materials and campaign communications utilized by a candidate, candidate finance committee or their agents or a Measure Finance Committee.

2 Television Any Campaign Communication that is televised shall include the disclosures required by this Regulation, both verbally and in writing, both appearing at the end of the communication. The written statement shall be un-obscured in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement and shall be shown for a period of at least four seconds. The verbal disclaimers shall be spoken at a rate of speech no faster than slowest rate of speech in the remainder of the Campaign Communication.

3 Exclusion "Campaign Communication" does not include a communication (1) appearing in a news story, commentary, or editorial distributed through the facilities of any newspaper, magazine or broadcasting station unless such facilities are owned or controlled by any political party, political committee, or candidate or (2) which constitutes a candidate debate or forum or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

D Filing Campaign Materials - Timing and Method.

1 All Campaign Materials required to be submitted under these Regulations shall be delivered to the City Clerk's office, which shall retain the Campaign Materials on behalf of the Board. Larger printed campaign materials such as yard signs and billboards shall be submitted in the form of replicas of a reduced size not to exceed eighteen by twenty-four inches.

2 All Campaign Materials shall be filed within five calendar days of the first day such Campaign Material is broadcast, transmitted or otherwise distributed. Campaign Materials sent by mail or hand delivered shall be filed within five calendar days after the first day such Campaign Materials are deposited with the postal service or other delivery service or hand delivered.

E Reporting Contributions - Contractor of Candidate's Employer Pursuant to Election Code Section 4 (c) 1 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. This information shall be included on a separate report on a form approved by the City Clerk.

F **Reporting refunds and similar expenditures** All contributions received must be reported. When part or all of a contribution is refunded to the contributor, the refund shall be listed under expenditures on the campaign finance report with a cross-reference by name of contributor and date of the campaign finance report that originally included the contribution being refunded. The same reporting requirements shall apply to contributions where payment is made to the candidate on an account with insufficient funds. Bad check charges paid by the Candidate or Measure Finance Committee shall be reported as an expenditure.

G **Reporting Contributions- Information Concerning Contributions** Pursuant to Election Code 4 (c) 1 B, the following information shall be provided concerning contributors.

There are three categories of contributors:

(1) Individuals who are employed The information that is required is (a) name, (b) occupation, (c) name of employer, if employed and if self-employed, name of contributor's business (c) address of employer and if self-employed, address of contributor's business and (d) nature of the contributor's business or the nature of the contributor's employer's business. No residential address of individuals who are employed is required. If a self-employed individual contributor conducts his/her business from his/her home then the residential street address or a post office box shall be submitted as the address for the business.

(2) Individuals who are not employed. Individuals who do not have a business address because they are retired or unemployed must identified in the report as retired or unemployed. The residential street address of retired or unemployed individual contributors shall be reported. Post office box numbers are not allowed as a substitute for a residential street address.

(3) Contributors other than individuals The information that must be reported for contributors other than individuals is (a) the name the contributor, (b) the address of the contributor, (c) the type of business or the activities conducted by the contributor and (d) the owners and managers of the contributor. The address of the contributor may be a post office box. The activity of the contributor shall be specific as to the services or products sold or, if no services or products are sold, the nature of the activities of the contributor.

H **The owners and managers of the contributor** Contributors who are not individuals must list the names of their owners and managers.

(1) "Owner" shall mean the names of all the individuals or entities who have an equity interest in and who participate in policy making for the contributing entity and who possess the authority to or in fact did authorize the contribution. For entities controlled by a board of directors, board of trustees or the equivalent thereof, the chairman of such board may be listed as the "owner" in lieu of all others.

(2) "Manager" shall mean the individual or individuals who are vested with and who have the responsibility to direct and administer the affairs of the contributing entity and who have the authority to or in fact did approve or direct that the contribution be made. For entities operating both in and out of New Mexico, only the New Mexico manager(s) need be listed if he or she had the authority to approve or direct the contribution. Chief executive officers or the equivalent thereof may be listed in lieu of other managers if they had the authority to approve or direct that the contribution be made. If no manager authorized the contribution, then all owners who had the authority to authorize the contribution shall be listed.

I **Wholly Owned Subsidiary Contributors** If a contributor is a business that is a wholly owned subsidiary of another business, such other business entity shall be identified for purposes of determining the cumulative amount of the contributions to calculate whether the maximum contribution has been exceeded.

Section 8 MISCELLANEOUS.

A **Notice** Any notice required by the Election Code or these Rules and Regulations shall be given by certified mail, personal service or as provided below. For the purposes of providing notice to a Candidate or the chairperson of a Measure Finance Committee, written notice mailed or delivered to the address specified in a Candidate's Declaration of Candidacy or a Committee's registration statement shall be considered sufficient notice to the Candidate or Committee. Provided, that if a Candidate or chairperson has furnished a different address pursuant to Section 7 of the Election Code, notice mailed or delivered to such an address shall be considered sufficient notice.

B **Meetings** The Board shall comply with the provisions of the New Mexico Open Meetings Act relating to notice to the public of its meetings and meetings being open to the public. The length of notice given to the public of the Board's meetings shall be determined by annual resolution. Deliberations on cases, including the drafting of findings and conclusions, may be in closed or open sessions.

C **Records.** All records of the Board in the conduct of its business, including but not limited to minutes of meetings, recommendations to the City Council and Mayor, or records and statements in connection with any particular election, shall be under the custody of the Office of the City Clerk, and shall be maintained as required by the Election Code.

D **Amendments** The Board, by majority vote, may amend these Rules and Regulations pursuant and subject to the authority granted under Section 9 of the Election Code.

E **Effective Date and Filing** These Rules and Regulations, having been approved by the Board of Ethics and Campaign Practices on May 30, 2007, by a vote of five for, none against and two absent, shall be effective on the date entered below and shall be filed in the Office of the City Clerk.

ADOPTED THIS 30th DAY OF MAY 2007.

Robert P. Tinnin, Jr.
Chairman, Board of Ethics and Campaign Practices

Millie Santillanes
Millie Santillanes, City Clerk