

## **2011 REGULATIONS OF THE ALBUQUERQUE CITY CLERK FOR THE OPEN AND ETHICAL ELECTIONS CODE**

**PURPOSE:** The purpose of these Regulations is to establish procedures that candidates shall follow under the Open and Ethical Elections Code, Albuquerque City Charter Article XVI (Hereinafter referred to as "the Code", with all citations referring to the Code unless otherwise noted). The City Clerk shall create forms, election calendars, timelines and all other documents necessary to implement these Regulations. In conformance with the Code and these Regulations, the documents and forms created by the City Clerk are not part of these Regulations.

**AUTHORITY:** Section 19 of the Code authorizes the City Clerk to adopt rules to insure the effective administration of the Code.

**APPLICABILITY:** These Regulations apply to all candidates for the offices of Mayor and City Council who seek eligibility to receive public funds or become Participating Candidates under the Code. These Regulations do not apply to candidates who are Nonparticipating Candidates.

**EFFECTIVE DATE:** These Regulations shall be effective upon the approval and signature of the Chief Administrative Officer. Once effective, the City Clerk shall publish these Regulations on the Office of the City Clerk website.

**DATES AND DEADLINES:** Should a deadline fall on a City observed holiday or a weekend, the deadline is automatically moved to the next City working day.

**GENERAL CAMPAIGN REPORTING:** Both Applicant and Participating Candidates under the Code shall follow all requirements and obligations of non-participating candidates and file any and all campaign financing reports pursuant to City Charter Articles XII and XIII and other applicable state and local laws. Code § 9.

### **PART A      DEFINITIONS**

All terms utilized herein shall have the same meaning as defined by the Code. This Part also contains new definitions as well as clarified definitions for terms contained within the Code.

**Applicable Spending Limit:** For a regular municipal election, an amount that is equal to the sum of revenue distributed to the Participating Candidate from the Fund, allowable Seed Money contributions received by the Participating Candidate and any matching funds distributed to the Participating Candidate. See Code §§ 3(R), 6(C) and (E), 12 (B) and (C), 14 and 16.

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 and any matching funds distributed to the Participating Candidate of the Open and Ethical Elections Code. See Code §§ 15 and 16.

**Broadly Distributed:** any communication delivered by a campaign, candidate, Measure Finance Committee or their agents that is sent, delivered or transmitted to more than one hundred people.

**Campaign Materials:** any Electioneering Communications as defined by the Code (§ 2(E)) as well as any published, printed or broadly distributed advertising or communications including but not limited to paid or donated advertisements, handbills, petitions, circulars, letters, radio, television or internet broadcasts, cable distributions, electronic or telephonic transmissions, or similar communication materials or methods used in a campaign either for or against any candidate. See Charter Article XIII, § 2(c).

**Contribution:** in addition to the definition in City Charter Article XIII, § 2(g), contributions also include In-Kind Contributions.

**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.

**Fund:** the Open and Ethical Elections Fund required Code § 10, and may be designated as the "ABQ OEE FUND". Payments to the Fund shall be made payable to the "ABQ OEE FUND" or the "CAOEE Fund."

**Independent Expenditure:** an expenditure by any person on Express Advocacy or Electioneering Communications that is 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. Code § 3 (J).

**In-Kind Contribution:** goods or services, other than money, having a monetary value that does not exceed more 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. (Code § 3(K)) This contribution cap applies to individual In-Kind 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. (Code § 6(E)).

**Participating Candidate:** a candidate for Mayor or City Council who chooses to obtain financing pursuant to the Code and who is certified to participate by the City Clerk.

**Regular Municipal Election:** an election that is held on the first Tuesday after the first Monday in October in odd numbered years. For the purpose of calculating when a communication becomes an Electioneering Communication, the period of time that begins the first day a voter may cast a ballot, thirty-five days prior to Election Day, the first day the Clerk may mail absentee ballots. This date is five days earlier than provided for in the Code.

**Qualifying Contribution:** a donation of exactly \$5.00 to the Fund in support of an Applicant Candidate and given pursuant to the Code and these Regulations. A Qualifying Contribution is not a prohibited contribution pursuant to Article XIII Section 4 (f) of the City Charter. Qualifying contributions in the form of checks or money orders shall contain the name of the Qualifying Candidate on the face of the check or money order. The City Clerk will provide the exact number of Qualifying Contributions needed for qualification as a Participating Candidate to candidates within three (3) days of the candidate filing their Declaration. Code §§ 3(P) and 5.

**Qualifying Period:** the timeframe in which an Applicant Candidate must receive Qualifying Contributions from a minimum of 1% of applicable registered City voters. See Code §§ 3(Q) and 5.

**Seed Money:** cumulative contributions received by an Applicant Candidate 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. See Code §§ 3(R) and 6.

## **PART B THE EXPLORATORY PERIOD**

**1. Timeframe:** For Mayoral candidates, the Exploratory Period is from January 1<sup>st</sup> through February 15<sup>th</sup> of the year in which a Mayoral election is held. For City Council candidates, the Exploratory Period is from March 15<sup>th</sup> through April 30<sup>th</sup> of the year in which a City Council election is held. Code § 3(G).

**2. Seed Money:** Applicant Candidates may raise Seed Money during the Exploratory Period and the Qualifying Period but not thereafter. Contributors of Seed Money shall be Persons as defined by § 3(O) of the Code.

Because the City Clerk cannot determine the applicable spending limit at the time Applicant Candidates must report Seed Money, the City Clerk will provide estimates to Applicant Candidates at the beginning of Exploratory Period. Any Seed Money received by a candidate or their representative(s) 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 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 Code. See Code §§ 3(R), 6(C), (D), and (F), and 12(C).

**3. In-Kind Contributions:** Applicant Candidates may receive In-Kind Contributions from the beginning of the Exploratory Period through the day the regular municipal election is held, or day of the runoff election, if applicable. In-Kind Contributions cannot exceed 10% of the applicable spending limit. Code § 6

In the event any disclosure report shows the cumulative value of In-Kind Contributions exceeds 10 % of the applicable spending limit, the candidate shall pay such excess to the City Clerk. Candidates shall also pay to the City Clerk the excess of any individual In-Kind Contribution that exceeds 5% of the annual salary for the office being sought (the "Excess Contribution"). Any In-Kind Contributions in excess of those allowed in the Code may also result in a violation of the Code. People making 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.

**4. Expenditures During Exploratory Period** The only funding sources that Applicant Candidates may use during the Exploratory Period for expenditures related to campaign activities for the City office being sought are Seed Money and In- Kind Contributions.

**5. Reporting**

**a. Training:** All campaign finance reporting is done electronically. Applicant Candidates and/or their designated representative(s) shall attend a reporting procedures training class conducted by the City Clerk prior to submitting the First Disclosure Report. All individuals completing the training shall execute an Acknowledgement of Training following the course which the City Clerk shall keep on file. The training received as an Applicant Candidate shall also serve as training for reporting under the Election Code.

**b.** Candidates shall attest to the accuracy of their electronic reports by executing and hand delivering a notarized Affidavit, in the form provided by the City Clerk, by noon on the day the first Disclosure Report is due.

**c. The First Disclosure Report for Seed Money and In-Kind Contributions:** Applicant Candidates shall submit a Declaration of Intent ("Declaration") prior to collecting any Qualifying Contributions. Applicant Candidates may file the Declaration from the beginning of the Exploratory Period through the Qualifying Period. The First Disclosure Report for Seed Money and In-Kind Contributions and Expenditures is due simultaneously with the Declaration. The reporting period for the first report is from the first day of the Exploratory Period until 5:00 p.m. on the day prior to the day the first disclosure report is filed with the City Clerk. Code § 4.

**d. The Second Disclosure Report:** The second report disclosing contributions and expenditures of Seed Money and In-Kind Contributions is due simultaneously with the final Qualifying Contributions, for Mayoral candidates, April 1<sup>st</sup> and for City Council candidates June 1<sup>st</sup>. The reporting period for the second report begins at 5:01 p.m. 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. Code § 7(C)

**e. Subsequent Reports:** All campaign finance reports made pursuant to the Election Code §4(c) shall include expenditures of Seed Money and the receipt of In-Kind Contributions not included in the reporting period for the first and second disclosure reports . Code § 9 (B) and (C)

**f. Deadlines for Reports:** All financial reports are due at 12:00 p.m. (noon) on the day the report is due. This includes filing the electronic report and the papers to the Office of the City Clerk.

**6. Required Information for Reporting Seed Money and In-Kind Contributions:** Disclosure Reports for Seed Money shall list the name, street address, phone number, occupation, employer of the contributor, and the employer's address. Self employed contributors must indicate a physical business address or state "same" if they share a business and personal address. Retired or unemployed contributors may indicate "none" for their business address.

If a contribution of Seed Money is from an organization, corporation or other entity, not prohibited from contributing under The Election Code, the City Clerk may request additional information from the Applicant Candidate showing membership and where business is conducted. See Code § 3(O)(3).

For In-Kind Contributions, the report shall show all of the information required for Seed Money as well as a detailed description of the goods and/or services provided along with 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 The Election Code, § 4 (f).

**7. Limitation on Contributions** The aggregate amount of In-Kind Contributions shall not exceed ten percent of the applicable spending limit. The aggregate amount of Seed Money Contributions shall not exceed ten percent of the applicable distribution to a Participating Candidate. These aggregate contribution limitations shall apply to both the regular and runoff elections.

## **Part C QUALIFYING PERIOD AND QUALIFYING CONTRIBUTIONS**

**1. Timeframe:** For Mayoral candidates the Qualifying Period is February 16<sup>th</sup> through March 31<sup>st</sup> of the year in which a Mayoral election is held. For City Council candidates, the Qualifying Period is May 1<sup>st</sup> through May 31<sup>st</sup> of the year in which a City Council election is held. Code § 3(Q). The Qualifying Period is the only time during which a candidate may solicit and receive Qualifying Contributions. Solicitation and collection of Qualifying Contributions during any other timeframe may result in a finding of violations by the Board of Ethics.

**2. The Declaration of Intent:** Applicant Candidates shall submit a Declaration of Intent ("Declaration"), on the form provided by the City Clerk, prior to collecting any Qualifying Contributions. The Office of the City Clerk will begin accepting Declarations at 8:00 a.m. on the first day of the Exploratory Period. The deadline to submit a Declaration is 5:00 p.m. on the last day of the Qualifying Period. 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. Code § 4(B) and (C). Applicant Candidates may begin to solicit and accept Qualifying Contributions immediately after the City Clerk accepts the Applicant Candidate's Declaration and the Qualifying Period has begun.

**3. Determining the Required Number of Qualifying Contributions:** The City Clerk shall calculate the number of qualifying contributions required for Applicant Candidates based upon the number of registered voters within the City of Albuquerque as shown on the voter registration rolls of the New Mexico Secretary of State and the Bernalillo County Clerk. For Mayoral candidates, the City Clerk will base the total on the number of voters registered city-wide as of February 1<sup>st</sup> of the year in which the election for Mayor is held. For City Council candidates, the number is based upon the number of registered voters within the applicable district as of April 15<sup>th</sup> of the year in which the election for the City Council position is held. Code § 5 (A) & (B). The City Clerk will provide the number of required Qualifying Contributions to Applicant Candidates within three (3) days of the marker day or upon submitting their Declaration, whichever occurs later.

**4. The Qualifying Contribution Books:** The City Clerk shall provide Applicant Candidates with the Qualifying Contribution form books ("Books") containing either 10 or 25 receipts. Applicant Candidates shall submit all Qualifying Contributions with the Books, containing the information of the corresponding contributors. The Books are pre-printed and all receipts contain the necessary notices to the contributor, except for the name of the Applicant Candidate, which candidates and their representatives must fill in after receiving the Books from the City Clerk. Code § 3(P).

Applicant Candidates shall obtain Books from only the Office of the City Clerk and sign an Acknowledgement for the number of Books received each and every time Books are provided to a campaign. Candidates shall not remove pages from the Books except to provide receipts to contributors which is the pink form. At the end of the Qualifying Period Applicant Candidates shall return all Books to the Office of the City Clerk regardless of whether they are used or unused. The City Clerk will accept partially used

Books but will not provide campaigns with partially used Books. Applicant Candidates are strongly urged to turn in completed Books whenever possible. It is the responsibility of the Applicant Candidate to assure that all Books are returned to the Office of the City Clerk. A failure to return Books may result in a finding of violations of the Code by the Board of Ethics.

All books containing signatures with corresponding Qualifying Contributions are due to the City Clerk by noon on April 1<sup>st</sup> for Mayoral Applicant Candidates and June 1<sup>st</sup> for City Council Applicant Candidates. All unused books are on April 15<sup>th</sup> and June 15<sup>th</sup>. The City Clerk will report unreturned books to the Board of Ethics.

**5. Soliciting and Accepting Qualifying Contributions:** Applicant Candidates and their representatives may solicit and accept Qualifying Contributions from all applicable City registered voters. Applicant Candidates and their agents shall solicit contributions in person and may not solicit contributions by mail, telephone or other medium. Applicant Candidates are responsible for assuring that the receipts are fully and correctly filled out, including signatures and that information is legible. The City Clerk will not certify Qualifying Contributions toward the required number of Qualified Contributions necessary to qualify an Applicant Candidate as a Participating Candidate which do not meet the requirements of this paragraph. Code § 3(P)

**a. The Date the Qualifying Contribution Was Received:** The date the contribution was received must be on or after the Applicant Candidate filed his or her Declaration of Intent and within the Qualifying Period. The date the contribution was received by the Qualifying Candidate or his/her representatives as stated in the contribution book shall be the date attributed to the contribution in the Book, regardless of the date written on the check or money order.

**b. The Name and Residential Address of the Contributor:** The contributor must provide the same name and physical residential address as shown on the contributor's New Mexico Secretary of State's voter registration rolls. It is the responsibility of the individual soliciting the contribution to inform the contributor. A post office box address does not meet the requirements of the Code.

Applicant Candidates may choose to gather petition signatures along with Qualifying Contributions. If a candidate chooses to collect Qualifying Contributions along with petition signatures, both the petition form and the Qualifying Contribution receipt must be completed in their entirety. The Office of the City Clerk will not accept petition forms or Books with indications to see the other form for voter information. Candidates need not turn in petition forms and Qualifying Contribution books with the same voters in at the same time.

**6. Contribution Reporting:** On each Friday of the Qualifying Period after March 1, for Mayoral Applicant Candidates and each Friday in the Qualifying Period, for City Council Applicant Candidates, the candidates shall report their Qualifying Contributions by turning in their Books and the corresponding contributions to the City Clerk.

- a. The receipts and contributions are due at the Clerk's Office by 12:00 p.m. (noon) of each Friday.
- b. If no Qualifying Contributions have been received by the Applicant Candidate by the filing deadline, Applicant Candidates shall report to the City Clerk that no Qualifying Contributions have been received by submitting the form supplied by the City Clerk.
- c. Applicant Candidates must report and submit all contributions received to the City Clerk on the deadline following receipt of the contribution.
- d. The final Qualifying Contribution disclosure is due no later than noon on the City working day immediately following the expiration of the Qualifying Period. Code § 9.
- e. Each contribution book shall have the correct amount of \$5.00 contributions to correspond with the number of signatures in the book (i.e. if the book contains 8 filled out receipts, then there must be payment equal to \$40.00 attached to the book cover).
- f. Applicant Candidates shall hand deliver a notarized affidavit, in the form provided by the City Clerk and signed by the Applicant Candidate along with the original Qualifying Contribution books signed by the contributors and Applicant Candidate or his/her representative and all corresponding Qualifying Funds before the filing deadlines.

**7. Verification of Qualifying Contributions:** The Office of the City Clerk will verify each and every Qualifying Contribution to assure the contributions meet all requirements. The City Clerk will assure that the staff is adequately trained in the verification process. Using the New Mexico Secretary of State's and Bernalillo County Clerk's Voter Registration System, clerks will physically verify each contributor by comparing the address, name and signature on the receipt to the voter registration information.

Receipts are accepted, rejected or left pending by the verifying clerk. Pending receipts are reviewed by a supervisor and the City Clerk to determine whether the receipt accepted or rejected. In the case of a rejected receipt, if there is some evidence of intentional wrong doing such as forged signatures, or multiple receipts being signed by a single person for one candidate or under different addresses the City Clerk will notify the City Attorney for further investigation. The City Clerk will consider any receipt submitted to the City Attorney as rejected until receiving an opinion or court order that the signature is acceptable.



**8. Certification of Participating Candidates for Public Financing:** The City Clerk shall certify Applicant Candidates who meet the requirements of the Open and Ethical Elections Code and who submit an Application for Certification as a Participating Candidate as Participating Candidates. Mayoral candidates must submit the Application for Certification by April 1<sup>st</sup> and City Council Candidates by June 1<sup>st</sup>. The City Clerk shall provide notice to all Applicant Candidates regarding whether they have been certified as a Participating Candidate by posting a list of certified Participating Candidates in the Office of the City Clerk and by Certified Mail to each Applicant Candidate. Certification as a Participating Candidate does not eliminate or modify candidate qualification requirements of the City Charter or under New Mexico law. Code § 7.

**9. Unsuccessful Applicant Candidates:** The Qualifying Contributions submitted by Applicant Candidates who fail to obtain a sufficient number of Qualifying Contributions or otherwise fail to qualify as a Participating Candidate shall be deposited in the Open and Ethical Elections Fund. No refund of Qualifying Contributions to the Applicant Candidate or contributors to an Applicant Candidate shall be allowed.

#### **PART D PARTICIPATING CANDIDATES**

**1. Reporting:** All Participating Candidates must fully comply with all aspects of campaign finance reporting pursuant to the City Charter, Revised Ordinances of Albuquerque and any and all Rules and Regulations of the Board of Ethics.

#### **2. Distribution of Funds to Participating Candidates**

**a. Electronic payment:** The City Clerk, with the assistance of the City's Treasury Department shall distribute all payments from the Fund electronically. Participating Candidates shall provide all necessary information for electronic transfers on the forms prescribed by the City Clerk.

**b. Timing of Distribution:** Upon certification of the Participating Candidates, and calculation of the funds owed to Participating Candidates, the City Clerk shall provide the necessary information to the Treasury Department to initiate the electronic transfer of the funds constituting the first distribution of monies from the Fund. The transfer of funds is subject to banking regulations and will typically occur one business day after the transfer is initiated. Code § 14.

**c. Initial Distribution:** Subject to availability of funds, the City Clerk shall distribute funds as outlined in Code §12. Qualifying Contributions, Seed Money and In-Kind Contributions that exceed the allowable limits and that are not paid to the City Clerk shall be deducted from the Fund distribution. The Clerk will determine the total funds available for distribution and apply an equation utilized to calculate fund distribution to individual participating candidates. The equation is: \$1.00 per applicable voter minus the sum of the candidate's Seed Money. Funding in addition to the initial distribution is subject to availability of funds. Code §§ 12 and 14.

**d. Payment of Matching Funds**

- i. The City Clerk will notify Participating Candidates qualifying for Matching Funds in the most expeditious manner available and confirm such notice in writing.
- ii. Payment of Matching Funds pursuant to Code § 16 is dependent upon the availability of funds. Matching Funds payments are also dependent upon all candidates, both participating and non-participating, filing campaign finance reports timely and completely. The Clerk will determine on a case-by-case basis whether a Participating Candidate is owed Matching Funds if reporting is incomplete when the reporting period closes.
- iii. The City Clerk may also distribute Matching Funds to Participating Candidates if it is determined that funds are owed based upon evidence that a non-participating candidate or Measure Finance Committee have made Coordinated Expenditures.
- iv. **Timing:** The City Clerk shall provide the calculation of Matching Funds to the Treasury Department as soon as practicable, but within two business days after determining that the expenditures of non-participating candidates and Measure Finance Committees require such payment pursuant to Code § 16. The City Clerk will make such determinations after each of the pre-election finance disclosure reports are due pursuant to the Election Code. Payments may be made in two increments. Electronic payment of matching funds after the campaign finance report required by the Election Code on the Friday before the election shall be paid on the same Friday, when possible. If the Clerk determines a participating candidate is owed matching funds on the Friday, Saturday, Sunday or Monday before the election, or on Election Day, a participating candidate may incur an expense equal to the amount of matching funds owed him/her. The Clerk shall make the payment for Matching Funds to the Participating Candidate as soon as possible, even if the payment is made after Election Day.
- v. **Matching Funds and Independent Expenditures:** When Matching Funds are calculated by including Independent Expenditures that are used to oppose a Participating Candidate, such calculation shall apply only to the Participating Candidate to whom such opposition is clearly directed.

**3. Inclusion of Independent Expenditures:** An Independent Expenditure, whether supportive or opposing, may effect payment of Matching Funds. The City Clerk shall consider Independent Expenditures supportive of an opposing candidate or in opposition to a Participating Candidate in the calculation of opposing funds. The following are examples of Independent Expenditures that would constitute "Opposing Funds" under the Open and Ethical Elections Code:

- a. Group A pays for and distributes radio ads that say, "Vote for Candidate X." If this is not a Coordinated Expenditure then Group A has made a supportive Independent Expenditure on behalf of Candidate X. This statement in support of a candidate constitutes "Express Advocacy", as defined by the Code § 3(H).
- b. Example 2: City Councilor Y is up for re-election. More than 30 days before the Election Day when Councilor Y is on the ballot, Group B pays for and distributes mailings that are critical of City Councilor Y's vote on an issue. The cost of the mailings is not a Coordinated Expenditure with any candidate opposing City Councilor Y. Group B's mailings do not mention an election, any candidates, or any actions around voting. Under these facts, there has not been an Independent Expenditure because the mailing does not constitute Express Advocacy and is not an includable Electioneering Communication because of its timing. However, under the same facts, if Group B distributes the mailing within 30 days of the election, the mailings become Electioneering Communications, and thus are opposing Independent Expenditures and the funds spent on the mailing are Opposing Funds under the Open and Ethical Elections Code.
- c. Example 3: Group C develops a radio commercial stating, "vote for candidates that supported/opposed the bill to raise property taxes." If not a Coordinated Expenditure, the commercial is a supportive/opposing Independent Expenditure and the funds spent constitute Opposing Funds under the Open and Ethical Elections Code. This communication constitutes Express Advocacy since the commercial asks the public to vote for or against identifiable candidates.
- d. Example 4: If any of the above examples, including both parts of Example 2, was made as a Coordinated Expenditure then the action is an In-kind Contribution to that candidate's campaign and is Opposing Funds on that basis. The action is not a supportive or opposing Independent Expenditure.

**4. Unreported expenditures:** The public may submit evidence of unreported expenditures by candidates and Measure Finance Committees to the City Clerk by submitting a complaint as described in § F(2) herein. The City Clerk may investigate and use such information as a basis for finding that a Participating Candidate is eligible for additional matching funds. Such Matching Funds are subject to reallocation to the Fund if a City Hearing Officer or the Board of Ethics overrules the City Clerk's finding.

**5. Payment of Funds to City:** Participating Candidates shall return all funds that are unspent or unencumbered as of the date of the Regular Municipal Election to the City Clerk for deposit into the Fund. The date of the Regular Municipal Election is the last day that candidates may spend or encumber funds. Candidates shall return the funds within two (2) weeks of Election Day. 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. Code § 8(C)

**5. Runoff Elections:** Participating Candidates who are part of a Runoff Election remain Participating Candidates as described herein.

- a. Candidates involved in a runoff election are not exempt from returning funds pursuant to Code § 8(C). Runoff candidates shall return and report funds as required and shall receive payment from the fund pursuant to the Code for runoff elections.
- b. Within two working days after a runoff election, Participating Candidates shall pay to the City Clerk all revenues provided for the Runoff election from the Fund that are not encumbered or spent.
- c. **Final Campaign Disclosure Report:** The final 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.
- d. **Spending Limits** In the event of a runoff election, the aggregate contributions for In-Kind Contributions shall be based on the spending limit for the runoff election. Spending limits for the runoff election shall be based on the amount of Fund revenues provided by the City Clerk to Participating Candidates for the runoff election. [Sections 3 (R) and 6 (D) and (E)].
- e. **Runoff Election Funds:** Participating Candidates may opt out of public funding if they are involved in a runoff election. However, candidates who opt out are subject to the same spending limits as if they were a Participating Candidate. Those spending limits are in an amount equal to the revenues to which Participating Candidates is entitled to receive from the Fund for the runoff, which is equal to \$0.33 per registered voter in the Council District for a City Council election and \$0.33 per registered City voter for a Mayoral election.
- 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:
  - i. The Friday of the fourth week preceding the runoff election;
  - ii. The Friday of the second week preceding the runoff election;
  - iii. 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. Such expenditures and contributions require that the candidate file a disclosure statement with the City Clerk by 5:00 p.m. of the following day;

- iv. The Friday immediately preceding the runoff election;
- v. The Monday immediately preceding the runoff election;
- vi. The seventh day after the election (which may also be the final statement); and,
- vii. A final statement not earlier than the seventh day or later than the forty-fifth day after the election.

**6. Unopposed Participating Candidates:** An Unopposed Participating Candidate is a Participating Candidate who has been certified as a candidate by the City Clerk pursuant to §3-8-27 NMSA 1978 and who has no opponent who has been certified as a candidate on the ballot pursuant to § 3-8-27(H) NMSA 1978 and who has no write-in opponent who has been certified as a write-in candidate pursuant § 3-8-27 (L) NMSA 1978; or a certified candidate whose certified opponents and certified write-in opponents withdraw their candidacy pursuant to § 3-8-27 NMSA 1978.

- a. **Notice and Payment:** At the time a Participating Candidate becomes an Unopposed Participating Candidate, the City Clerk shall give such candidate written notice that he or she is unopposed. Within three (3) business of days of the date of the notice, the Unopposed Participating Candidate shall return all funds he or she has received from the Fund, minus any legitimate expenditures made prior to notice that the candidate is unopposed. These expenditures include any encumbrances that were incurred prior to notice.
- b. **Accounting:** The Unopposed Participating Candidate shall submit a detailed accounting of all expenditures made or expenditures for which the candidate is contractually obligated through the day the Participating Candidate becomes unopposed, specifying outstanding obligations. The accounting is due concurrent with the second campaign finance disclosure report required pursuant to the Election Code. Unopposed Candidates shall provide supplemental accountings at the time each subsequent campaign finance disclosure report is due, with a final accounting due no later than the date the final campaign financing disclosure report is due. Such accounting shall include any credits or refunds to which the Participating Candidate may be entitled. The refund shall include all funds not yet spent by the Participating Candidate less amounts that the Participating Candidate is contractually obligated to pay. Unopposed Participating Candidates shall pay the received credits and refunds for cancelled orders or contracts for goods and services within three (3) business days of receipt.

## **PART E PERMISSIBLE CAMPAIGN RELATED EXPENDITURES**

1. Code § 8 (D) and (E) clearly outlines expenditures that are prohibited for Participating Candidates. However, several of the prohibited expenditures are permitted under specific circumstances. Candidates shall review the provisions of Code § 8 (D) and (E) and contact the Office of the City Clerk with questions, prior to requesting an Advisory Opinion from the Board of Ethics in the event that the City Clerk can clarify the provisions of this section. Participating Candidates may use fund revenues for the following expenditures:

- a. **Salaries and other forms of compensation** for persons providing bona fide services to the campaign, 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.
- b. **Admission fees** to sporting events, concerts, theater or other forms of entertainment for the purpose of conducting a specific campaign activity.
- c. **Dues or fees** for parking or gratuities at a country club, health club or other recreational facilities where such costs are a result of a specific campaign activity.
- d. **Purchases of food, beverages and/or supplies** used exclusively for a campaign activity.
- e. **Clothing** when it has a campaign message as part of the clothing or is used as a uniform for campaign staff and/or volunteers.
- f. **Minor Cost Items** of de minimus value used in the campaign.
- g. **Campaign Materials** as defined herein. Candidates may utilize surplus Campaign Materials from previous campaigns. Candidates must report such utilization of surplus materials, but it is not considered an In-Kind Contribution.
- h. **Compensation to Campaign Staff** for services to the campaign.
- i. **Communication Systems**, including expenditures for the purchase or lease of computers, telephone systems, telephones, internet service, and other related communication devices used in campaign activities.
- j. **Mortgage, rent or other payment** for Campaign headquarters and/or offices as well as expenditures related to such headquarters and/or offices such as, security deposits, utilities, television reception, furniture, office equipment, office supplies, and janitorial services.

**2. Property Purchased from Fund Distribution:** Participating Candidates who purchase property pursuant to these Regulations, may retain such property for the term of the election, including a run-off election, if one becomes necessary. Following the election, the Participating Candidate may retain any single item of property having a fair market value of less than \$100.00. The Participating Candidate shall dispose of each single item of property worth more than \$100.00 by selling the items at fair market value, with the proceeds being returned to the Clerk and deposited back into the Fund or the property given to the Clerk for sale at auction with the proceeds deposited back into the Fund. Participating Candidates must dispose of all property prior to the filing of final campaign finance disclosure reports and report the items retained, disposed of, or given to the Office of the City Clerk.

## **PART F COORDINATED AND INDEPENDENT EXPENDITURES**

**1. Correct Reporting:** It is acceptable for Participating Candidates to partake in Coordinated Expenditures, so long as the expenditures are reported as such by all persons and entities involved with the expenditure. Any person or entity may allege a Coordinated Expenditure if they receive reasonably credible information that any person or entity claiming to make an Independent Expenditure has received in cooperation, consultation or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee or an agent thereof, photographs, position statements, scheduling of campaign events, campaign advertising materials, information, schedules or other materials from the candidate or campaign for whom the expenditures benefit or for expenditures that oppose such candidate's opponent(s). Independent Expenditures may consist of materials previously made public by the campaign without implying coordination by the campaign.

**2. Allegations and Complaints:** Persons wishing to report an allegation of a suspected Coordinated Expenditure must file a Complaint with the City Clerk. The Complaint must contain:

- a. The name, address and telephone number of the party or entity making the allegation;
- b. The name of the Participating Candidate, person or entity that is the subject of the allegation;
- c. The facts, with reasonable particularity, which lead the alleging party to file the Complaint; and
- d. The signature of the alleging party or spokesperson of the entity making the allegation, along with a verified statement that the contents of the complaint are true and correct to the knowledge and belief of the alleging party.

The City Clerk may also obtain information of a suspected Coordinated Expenditure independent of a formal complaint. Upon receipt of allegations or information that suspected Coordinated Expenditure exists, the City Clerk shall submit such allegations to a City Hearing Officer.

**4. Hearing:** Upon receipt of a Complaint alleging that a purported Independent Expenditure is a Coordinated Expenditure, or upon obtaining such information independently of a formal complaint, the City Clerk shall submit such charges to a City Hearing Officer. The Hearing Officer shall review the information, schedule a hearing and provide notice to all relevant parties, including the Participating Candidate, the person or entity making the suspected Coordinated Expenditure and the alleging party. The hearing shall take place within 30 calendar days of the date of Notice. Notice shall include a copy of the Complaint, the date, time and place of the hearing and a certification of the date and method of notice.

Those people or entities receiving such notice may retain legal counsel to represent them at the hearing and shall have ten calendar days from the date of certification to file an answer with the Hearing Officer.

Hearsay is permitted in the hearing. In the event the hearing officer finds that the expenditure was coordinated with a Participating Candidate, the hearing officer shall order that the amount of expenditure be treated as a contribution to such candidate and be deducted from the amount of funds made available from the Fund. In the event the Participating Candidate has received all revenues from the Open and Ethical Elections Fund for which he/she is eligible, then the Participating Candidate shall remit payment in the amount of such expenditure(s) to the City Clerk within three (3) days. The hearing officer shall not make a ruling concerning any allegation that an expenditure exceeded campaign contribution limits. The City Clerk will refer such allegations to the Board of Ethics and Campaign Practices as specified hereafter. Any party who disputes the ruling of the hearing officer shall follow the procedures provided in the Open and Ethical Elections Code.

**5. Board of Ethics** If the City Clerk determines that the expenditures(s) before the hearing officer exceeds the contribution limits established in the Election Code of the City Charter, then, in addition to the requirements described in this subsection, the City Clerk shall submit to the Board of Ethics and Campaign Practices any evidence of excess contributions. An appeal of the hearing officer's ruling shall not stay the consideration of excess contribution charges before the Board of Ethics and Campaign Practices.

## **PART G WITHDRAWAL OF PARTICIPATION**

**1. Applicant Candidates:** An Applicant Candidate may withdraw as an Applicant Candidate, by filing their written withdrawal of their Declaration of Intent on the form approved by the City Clerk. Withdrawal as an Applicant Candidate must occur prior to the deadline for submitting the Application for Certification as a Participating Candidate. At the time the statement of withdrawal is submitted, the Applicant Candidate shall report all Qualifying Contributions, In-Kind Contributions and Seed Money received by the Applicant Candidate to date. Withdrawing Applicant Candidates shall also submit all Qualifying Contributions, used and unused Books and all unspent Seed Money to the City Clerk. Withdrawing Applicant Candidates shall also file all reports necessary for the returned monies. Applicant Candidates who withdraw or do not qualify as a Participating Candidate are not subject to spending limits as outlined in the Code if they continue as a non-participating candidate.



2. **Participating Candidates:** A Participating Candidate may withdraw their participation as a publicly financed candidate at any time by filing the statement of withdrawal with the City Clerk on the approved form. Withdrawn Participating Candidates may continue their campaign as a nonparticipating candidate or withdraw from a race completely as stated in Code § 12 (D), (E), and (G). All received monies from the Fund and corresponding reports are due to the City Clerk at the time the withdrawal is filed.

3. **Participating Candidates who do not qualify as Candidates:** A Participating Candidate who does not qualify as a candidate pursuant to § 3-8-27 G. NMSA 1978 shall deliver to the City Clerk the funds as outlined in Code § 12 (F) within five (5) days from the date of notice that they have not qualified as candidates. All received monies from the Fund and corresponding reports are due to the City Clerk at the time the withdrawal is filed.

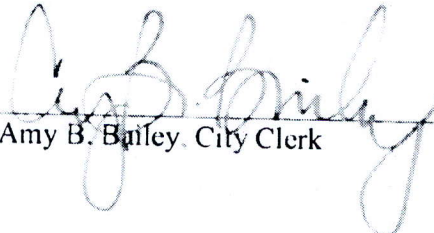
4. **Use of refunded money:** The City Clerk will not redistribute funds returned to the Open and Ethical Elections Fund pursuant to this section to other Participating Candidates in the present election cycle for the regular municipal election. However, the City Clerk may use the returned funds to pay matching funds or to correct a distribution reduction caused by Section 14 B of the Code.

Approved:

  
\_\_\_\_\_  
Robert J. Perry, Chief Administrative Officer

4/20/11  
Date

Recommended:

  
\_\_\_\_\_  
Amy B. Bailey, City Clerk

4/26/2011  
Date

