

Proposed 2009 Amendments

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

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

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

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

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

PART A DEFINITIONS

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

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

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

Campaign Materials mean those materials defined in City Charter Article XIII, Section 2(c), which includes but is not limited to materials broadly distributed by

any source such as printed material, telephone, television, radio, e-mail, internet web site or mailings. Campaign Materials shall also include all Electioneering Communications as defined in the Open and Ethical Elections Code.

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

Declaration of Intent ~~is a statement by a person declaring their intent to participate as an Applicant Candidate seeking public financing under the Open and Ethical Election Code made in writing on a form provided by the City Clerk prior to seeking any Qualifying Contributions. Section 4. The form attached to this Regulation as Form 1.~~

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

In-Kind Contribution means goods or services, other than money, having a monetary value not to exceed five percent of the annual salary for such office being sought at the time of filing the Declaration of Candidacy, but does not include the value of personal services volunteered by individuals. [Section 3 (K)]. The aggregate amount of In-Kind Contributions received by an Applicant Candidate shall not exceed an amount equal to 10% of the applicable spending limit. The five percent of the annual salary limitation applies to each separate In-Kind Contribution. [Section 6 (E)].

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

Qualifying Contribution means a donation of \$5.00 ~~in the form of cash, check, or money order made payable~~ to the City of Albuquerque Open and Ethical Elections Fund or “ABQ OEE FUND”, in support of an Applicant Candidate.

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

Seed Money means cumulative contributions of no more than \$100 per person and \$500 of the Applicant Candidate’s own money raised for the primary purpose of enabling the Applicant Candidate to collect Qualifying Contributions and petition signatures. Seed Money may not exceed 10% of the applicable spending limit and may be raised only during the exploratory and qualifying periods. [Section 3 (R), Section 6 (D)].

PART B THE EXPLORATORY PERIOD

1. Exploratory Period For Mayoral candidates, the Exploratory Period is from January 1 through February 15 of the year in which a Mayoral election is

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

2. Seed Money and In-Kind Contributions During Exploratory Period

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

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

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

5. In-Kind Contributions In-Kind Contributions may be received from the beginning of the Exploratory Period through the day the regular municipal election is held, or day of the runoff election, if applicable. [Section 6 (E)]. In the event any disclosure report shows the cumulative value of In-Kind Contributions exceeds 10 % of the applicable spending limit, such excess shall be paid by the candidate to the City Clerk, ~~and if not paid, shall be deducted from any future payments from the Fund to the candidate.~~ Any individual In-Kind Contribution that exceeds 5% of the annual salary for the office being sought (the "Excess Contribution") shall also be paid by the candidate to the City Clerk. Any In-Kind Contributions in excess of those allowed in the Act may also result in a violation of the Act. People who contribute In-Kind Contributions are not required to

reside in the City of Albuquerque nor are they required to be registered to vote in the City of Albuquerque. [Section 6 (C)].

6. Reporting

a. The First Disclosure Report for Seed Money and In-Kind Contributions and Training Applicant Candidates shall submit a Declaration of Intent ~~[Form—1]~~ prior to collecting any Qualifying Contributions. At the time the Declaration is filed, the First Disclosure Report for ~~of such submission, Applicant Candidates shall file their first contribution and expenditure report regarding~~ Seed Money and In-Kind Contributions must be filed with the City Clerk. The Report shall be submitted electronically. The Declaration of Intent may be filed at the beginning of the Exploratory Period up through the Qualifying Period. The Applicant Candidate or his/her designated representatives shall attend a reporting procedures training class conducted by the City Clerk. ~~The First Disclosure Report for Seed Money and In-Kind Contributions shall be filed electronically.~~ A notarized affidavit signed by the Applicant Candidate ~~[Form—2]~~ shall be hand delivered to the City Clerk's office by noon on the day the first Disclosure Report for Seed Money and In-Kind Contributions is due. ~~The day the First Disclosure report is due for Mayor is March 15 and for City Council is May 15 if those dates are on a City working day, otherwise, the next City working day.~~ The reporting period for the first report shall be from the beginning of the Exploratory Period until 5:00 p.m. on the day prior to the day the first disclosure report is required to be filed with the City Clerk. [Section 4 (A) - (D)].

b. The Second Disclosure Report The second report disclosing contributions of Seed Money and In-Kind Contributions shall be filed at the same time the final Qualifying Contribution report is due. The Disclosure Report shall be filed electronically. A notarized affidavit signed by the Applicant Candidate ~~[Form—2]~~ shall be hand delivered to the City Clerk's office by noon on the day the Second Disclosure Report for Seed Money and In-Kind Contributions is due. The day the Second Disclosure report is due for Mayor is April 1 and for City Council is June 1 if those dates are on a City working day, otherwise, the next City working day. The second report shall be the final report for Seed Money. The reporting period for the second report shall be from the end of the reporting period for the first report until 5:00 p.m. on the day prior to the day in which the Second Disclosure Report is required to be filed. [Section 7 (C)].

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

day prior to the day the report is filed with the City Clerk. [Section 9 (B and C)].

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

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

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

- 1) the Friday of the fourth week preceding the runoff election,
- 2) the Friday of the second week preceding the runoff election.
- 3) Daily campaign disclosure statements are due from any candidate incurring any expenditure or receiving a contribution of over \$500.00 any time after 5:00 p.m. the Tuesday preceding the election shall file a disclosure statement with the City Clerk by 5:00 p.m. of the following day.
- 4) the Friday immediately preceding the runoff election.
- 5) the Monday immediately preceding the runoff election, and
- 6) the seventh day after the election (which may also be the final statement).

- 7) a final statement not earlier than the seventh day nor later than the forty-fifth day after the election.

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

Part C QUALIFYING CONTRIBUTIONS

1. The Declaration of Intent Applicant Candidates shall submit a Declaration of Intent ~~[Form 1]~~ prior to collecting any Qualifying Contributions. Qualifying Contributions may not be collected during the Exploratory Period. Qualifying Contributions may only be collected after the beginning of the Qualifying Period on February 16 of the election year. Qualifying Contributions are \$5.00 contributions collected by the Applicant Candidate which are paid to the Fund and not retained by the Applicant Candidate. A Declaration of Intent may be filed no earlier than two City working days prior to the commencement of the Qualifying Period and The Declaration of Intent may be filed beginning on the First Day of the Exploratory Period and no later than 5:00 ~~o'clock~~ p.m. on the last day of the Qualifying Period. If the last day of the Qualifying Period falls on a City observed holiday or a weekend, the last day shall be extended to 5:00 ~~o'clock~~ p.m. of the next City working day. Applicant Candidates shall file a detailed contribution and expenditure report regarding Seed Money and In-Kind Contributions with the City Clerk at the time of filing a Declaration of Intent [Section 4 (B)].

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

3. Filing Requirements The Qualifying Contributions shall be submitted to the City Clerk along with the receipts provided by the Clerk. report shall be submitted on the Qualifying Contribution Form provided by the City Clerk. The

form receipt must be completely filled out with the name of the contributor, street address, the amount contributed and the date the contribution was made.

If a candidate chooses to collect Qualifying Contributions along with petition signatures, both the petition form and the Qualifying Contribution receipt must be completed. However, if a registered voter fills out the two forms concurrently, the address on the petition form may be used by the Clerk to verify the registration of the signer for both the petition and the receipt. The signer of the form and receipt may just sign the receipt, and state "Petition Signed", print their name, the date and sign the receipt, and not provide their address a second time. The candidate must still complete their portion of the receipt. The petition Form and the receipt must be returned to the Clerk together or the receipt and contribution may not be able to be verified and counted by the Clerk.

A notarized affidavit signed by the Applicant Candidate ~~[Form 2]~~ shall be hand delivered to the City Clerk along with the original Qualifying Receipt forms signed by the contributors and Applicant Candidate or his/her representative, and all Qualifying Funds before 5:00 p.m. at the time of the filing deadlines. [Section 7 (C) and (D)].

4. Filing Deadlines On each Friday of the Qualifying Period after March 1, Applicant Candidates shall report their Qualifying Contributions by turning in their receipts and contributions to the City Clerk. The receipts and contributions are due at the Clerk's Office by noon of each Friday. The first Qualifying Contribution report shall be filed no later than noon March 15 for Mayoral candidates and May 15 for City Council candidates. In the event March 15 or May 15 is not a City working day, the Qualifying Contribution report shall be filed the next City working day. If no Qualifying Contributions have been received by the Applicant Candidate by the applicable filing deadline, March 15 or May 15, as applies, Applicant Candidates shall report to the City Clerk that no Qualifying Contributions have been received. All contributions to date must be reported and submitted to the City Clerk. The final Qualifying Contribution report shall be filed no later than noon on the City working day immediately following the expiration of the Qualifying Period. The final Qualifying Contribution report shall show all Qualifying Contributions received by the Applicant Candidate or his/her representatives during the entire Qualifying period. [Section 9 (B) and (C)].

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

a. The Date the Qualifying Contribution Was Received The date the contribution was received must be within the Qualifying Period. For purposes of determining whether a Qualifying Contribution was made during the Qualifying Period, the date of the Qualifying Contribution must also be after the time the Applicant Candidate filed his or her Declaration of Intent. The date the contribution was received by the Qualifying Candidate or his/her representatives shall be the date attributed to the contribution, regardless of the date written on the check or money order.

All disclosure reports shall indicate the date cash was received by the Qualifying Candidate or his/her representatives. [Section 3 (P) (2) (3) (4)].

b. The Name and Residential Address of the Contributor The name and residential address of the contributor shall be the same as shown on the New Mexico Secretary of State's voter registration rolls for precincts within the City of Albuquerque for Applicant Candidates for Mayor or within the Applicant Candidate's City Council District for Candidates for City Council. The combined petition and receipt process described in Paragraph 3 above may be followed. The receipt for the Qualifying Contribution, see Form 5, shall include the statement that the Qualifying Contribution was made with the contributor's own funds and that the contributor understands that the purpose of the contribution is to qualify the Applicant Candidate for Public funding and that nothing of value was received in return for the contribution. A post office box address shall not be a sufficient address to meet the requirements of this paragraph. Qualifying Contributions not meeting the requirements of this paragraph shall not be counted toward the required number of Qualified Contributions necessary to qualify an Applicant Candidate as a Participating Candidate. [Section 3 (P)].

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

6. Qualifying Contribution Requirements All Qualifying Contributions shall be a donation of exactly five dollars (\$5.00). No other sum will be accepted as a Qualifying Contribution or be counted toward the required number of qualifying contributions. Qualifying contributions in the form of checks or money orders must be made payable to the order of the City of Albuquerque Open and Ethical Elections Fund or "ABQ OEE FUND" and shall contain the name of the Qualifying Candidate on the face of the check or money order. [Section 3 (P)].

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

8. Additional Report/Receipts Required At the time each Qualifying Contribution report is due, the Applicant Candidate shall have submitted to the City Clerk copies of receipts provided to each contributor that identify the

contributor's name, residential address and date of the contribution. A receipt for each contributor listed in the Qualifying Contribution report signed by the contributor and the Applicant Candidate and/or their representative shall be submitted by the Applicant Candidate at the time each Qualifying Contribution report is submitted. The Applicant Candidate with their signature on each receipt certifies that all such contributions were made with his/her knowledge. Contributions not accompanied by the receipt provided by the City Clerk shall not be counted toward the required number of Qualifying Contributions necessary to qualify an Applicant Candidate as a Participating Candidate. [Section 3 (P)].

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

10. Certification of Participating Candidates for Public Financing The City Clerk shall certify as Participating Candidates those Applicant Candidates who meet the requirements of the Open and Ethical Elections Code and have submitted an Application for Certification as a Participating Candidate [~~Form 3 for Mayor, Form 4 for City Council~~]. The City Clerk shall provide notice to all Applicant Candidates as to whether or not they have been certified as a Participating Candidate. Such notice shall be posted in the office of the City Clerk and sent by certified mail to the Applicant Candidates. Certification as a Participating Candidate shall not be a substitute for the candidates filing requirement of Section 3-8-27 NMSA 1978 or the certification of candidate's by the City Clerk required by Section 3-8-27 G. NMSA 1978. Certification as a Participating Candidate does not eliminate or modify candidate qualification requirements of the City Charter. [Section 7 (A) (B)].

PART D ADDITIONAL REPORTING REQUIREMENTS

1. General Reporting Requirements All contributions received and expenditures made by a candidate shall be reported pursuant to City Charter Article XIII, Section 4 (c) and City Charter Article XII, Section 5, when applicable. All contributions, ~~including but not limited to In-Kind Contributions~~, shall be subject to the contribution and limits reporting requirements of City Charter Article XIII, ~~Section 4 (e)~~. These reporting requirements are in addition to the reporting requirements set forth in the Open and Ethical Elections Code and these Regulations. [Section 9. (A) (B) (C)].

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

3. Previous Election Debt and Reporting The Declaration of Intent requires that Applicant Candidates agree that any money received from the Open and Ethical Elections Fund shall not be used to retire a prior campaign debt. However, contributions received by an applicant candidate prior to the Exploratory Period, ~~contributions that are less than half of the Seed Money~~

~~contributed~~ Seed Money, as an incidental but not primary purpose, and In-Kind Contributions may be used to retire prior campaign debt. All contributions received for the payment of debt from past campaigns and all expenditures made for the payment of debt from past campaigns shall be reported pursuant to City Charter Article XIII, Section 4 (c) and of City Charter Article XII, Section 5 when applicable and shall be subject to the contribution limits of City Charter Article XII, Section 4 (e). [Section 4 (D)].

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

PART E PERMISSABLE CAMPAIGN RELATED EXPENDITURES

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

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

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

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

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

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

7. Compensation to Campaign Staff.

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

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

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

PART F COORDINATED EXPENDITURES

1. Coordinated Expenditure means made in cooperation, consultation or concert 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." [Section 3 (H)].

2. Independent Expenditure means, an expenditure by any person that is not made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent thereof. [Section 3 (J)].

3. Complaints A Coordinated Expenditure may be alleged if 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 or campaign advertising materials, information, schedules or other materials from the candidate for whom the expenditures benefits or for expenditures that oppose such candidate's opponent(s). Receipt of the materials listed heretofore shall not indicate a coordinated expenditure when the source of such materials was from campaign materials already distributed to the public or broadcast by a candidate, the candidates authorized committee or an agent thereof. [Section 3 (J)].

4. Hearing Upon receipt of allegations 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 who shall conduct a hearing, giving notice to the candidate charged with failing to report the disputed expenditure as a contribution to that candidate's campaign and the person or entity that made the disputed expenditure. Those people or entities receiving such notice shall have ten days from the day of receipt of such notice to file an answer. Thereafter, the hearing officer shall schedule and conduct a hearing within twenty consecutive calendar days. 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 amount of such expenditure(s) shall be paid to the City Clerk by the Participating Candidate. The hearing officer shall not make a ruling concerning any allegation that an expenditure exceeded campaign contribution limits and such allegations shall be referred 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 Section 20 of 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 AS A PARTICIPATING CANDIDATE

1. Applicant Candidates In the event an Applicant Candidate wishes to withdraw as an Applicant Candidate, he/she shall provide a written statement of his/her withdrawal of the Declaration of Intent. The written statement shall be in a form approved by the City Clerk. Withdrawal as an Applicant Candidate may be made up 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 and submit all Qualifying Contributions and all unspent Seed Money to the City Clerk. Applicant Candidates who withdraw their Declaration of Intent but who continue their candidacy as nonparticipating candidates do not have to pay the City Clerk the unspent Seed Money and Qualifying Contributions but, to the extent required, shall report such contributions pursuant to the finance disclosure requirements of the Election Code.

2. Participating Candidate continuing candidacy as a nonparticipating candidate A Participating Candidate may withdraw as a Participating Candidate and continue as a nonparticipating candidate at any time by filing a written statement of withdrawal with the City Clerk. The written statement shall be in a form approved by the City Clerk. At the time the statement of withdrawal is filed, the candidate shall deliver to the City Clerk an amount of money equal to all monies distributed to the candidate from the Fund plus interest at the rate of twelve percent per annum. [Section 12 (D) and (E)].

3. Expenditure limits continue A Participating Candidate who elects to become a nonparticipating candidate shall remain subject to the same spending limits he or she would have been subject to had he/she remained a Participating Candidate. [Section 12 (E)(2)]. This provision does not apply to Applicant Candidates who are not certified as Participating Candidates.

4. Participating Candidates who do not qualify to be on the ballot A Participating Candidate who does not qualify to be on the ballot pursuant to § 3-8-27 G. NMSA 1978 shall deliver to the City Clerk an amount of money equal to all monies distributed to the candidate from the Fund plus interest at the rate of twelve percent per annum. [Section 12 (F)].

5. Participating Candidate who ceases to be a candidate Participating Candidates who withdraw their candidacy after qualifying to be on the ballot, shall immediately return any amount to the Fund that is unspent or unencumbered for expenditures allowed by these rules at the time he/she submits the affidavit of withdrawal of candidacy as required pursuant to § 3-8-271. NMSA 1978. [Section 12 (G)].

6. Use of refunded money The funds returned to the Open and Ethical Elections Fund pursuant to this Part G shall not be redistributed to other Participating Candidates in the present election cycle for the regular municipal election.

PART H MISCELLANEOUS PROVISIONS

1. Form of Payment Whenever these Regulations require payment to the City Clerk, such payment shall be made to the order of the City of Albuquerque Open and Ethical Elections Fund or “ABQ OEE FUND”.

2. Filing an Application for Certification as a Participating Candidate This application shall be filed with the City Clerk no later than noon on the first city working day after March 31 for Mayoral candidates and May 31 for city council candidates. The applicant shall swear or affirm that they have complied with all requirements concerning Seed Money, In-Kind Contributions and has submitted the Qualifying Contributions disclosure report, a receipt for each Qualifying Contribution, the affidavit in support of the disclosure report, and has submitted all qualifying contributions to the City Clerk.

3. Refunds - Regular Election Within two weeks after the regular municipal election Participating Candidates shall pay to the City Clerk all Seed Money and/or revenues from the Fund that are not encumbered or spent. This requirement applies to those Participating Candidates regardless of whether or not they are required to run in a runoff election. [Section 8 (C)].

4. Refunds - Runoff Elections Within two week 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. [Section 8 (C)].

5. 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.

6. 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.

7. Runoff Election 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)].

Section 8. Distribution of Funds to Participating Candidates

a. Timing and amount Two days after certification of Qualifying Candidates the City Clerk makes the first distribution of funds from the Fund. In a City Council race, the City Clerk shall issue Fund revenue to each Participating Candidate in the amount of \$1.00 per registered voter in the Council District to which the Participating Candidate seeks to be elected, subject to availability of funds. Qualifying Contributions, Seed Money ~~that exceed the allowable limits~~ 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 City Clerk shall issue Fund revenue to each Participating Candidate for Mayor in the amount of \$1.00 per registered voter in the City of Albuquerque. The final amount each Participating Candidate for Mayor receives is subject to the same restrictions as City Council Participating Candidates, as specified above. Funding in addition to the initial distribution ~~plus any seed money spent by a Participating Candidate~~ is subject to availability of funds. [Section 12 (B) and Section 14].

b. Electronic payment To the extent the City is able to distribute Funds to Participating Candidates electronically, it may do so, provided that Participating Candidates follow the procedures established by the City and provide all information for such transfer required by the City.

9. Payment of Matching Funds

a. Timing ~~When Matching Funds are paid, they shall be~~ shall be paid as soon as the City Clerk is able to determine that the expenditures of non-participating candidates and measure finance committees require such payment. Such payment shall be made as soon as possible after ~~the first, second and third-~~ each of the pre-election finance disclosure reports ~~is are~~ due pursuant to the Election Code. Payments may be made in two increments. The first payment may be based on the funds spent by non-participating candidates that exceed the expenditure limits that apply to their participating candidate opponent(s). These payments will be made within one working day after the filing of campaign finance reports required by the Election Code as to those participating candidates who have provided the information required in Part H, Section 8 b. 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, to those participating candidates who have provided the information required in Part H, Section 8 b, subject to the finance

reports being filed on time, being complete and the volume of the reports. 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. Provided funds are available, the matching fund payment shall be made to the participating candidate as soon as possible, even if the payment is made after Election Day. Partial payment may be made when the campaign finance reports received by the City Clerk are incomplete. If, after further examination of the expenditures reported by non-participating candidates and measure finance committees, the City Clerk determines that additional matching funds are allowed on the basis of coordinated expenditures, subsequent matching fund payments shall be made to eligible participating candidates. The payments required in this section are subject to availability of funds. [Section 4 (c) and [Section 14].

b. Calculation When Matching Funds are calculated by including Independent Expenditures that are used to oppose a Participating Candidate, such calculation shall apply only to the candidate seeking the office of City Council or Mayor in question to whom such opposition is directed.

c. Inclusion of Supportive or Opposing Independent Expenditures. ~~Independent Expenditures that do not specify a Participating Candidate by name or title shall not be added in the Matching Fund calculation as an Independent Expenditure opposing a Participating Candidate. Independent Expenditures that do not specify a nonparticipating candidate by name or title shall not be added in the Matching Fund calculation. For example, an Independent Expenditure urging voters to vote for the incumbent Mayor without specifying the Mayor's name (a nonparticipating candidate) would be added into the calculation. An Independent Expenditure urging voters to vote against candidates (where no candidate is specified by name or title) who do not support a referendum would not be included in the calculation.~~

An expenditure by a person in support of a candidate, or in opposition to a participating candidate, may constitute an Independent Expenditure as defined by the Code. An Independent Expenditure occurs where, when taken as a whole and with reference to external events, such as the proximity of the election, it is reasonable to conclude the expenditure is advocating the election or defeat of one or more clearly identifiable candidate(s). An expenditure that is found to be an Independent Expenditure is included in the total amount of "Opposing Funds", as defined by the Code, and may trigger the distribution of Matching Funds if the other requirements of the Code are met. [Section 16].

The following are examples of Independent Expenditures that would constitute "Opposing Funds" under the Open and Ethical Elections Code:

Example 1: 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. [Section 3(H)].

Example 2: Group B pays for and distributes mail pieces that are critical of City Councilor Y's vote on an issue and not as a Coordinated Expenditure with any candidate opposing City Councilor Y. City Councilor Y is up for re-election. Group B's mail does not mention an election, any candidates, or any actions around voting. Group B's mailer is distributed more than 30 days before Councilor Y's election date. Under these facts, there has not been an Independent Expenditure because the mail piece does not constitute Express Advocacy and is not an includable Electioneering Communication because it is made more than 30 days prior to the election. Under the same facts, if Group B distributes the mailing within 30 days of the election, it would fall within the definition of an Electioneering Communication and the mailing is an opposing Independent Expenditure and the funds spent on the mailing are Opposing Funds under the Open and Ethical Elections Code. [Section 2 (E)].

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, there has been 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.

Example 4: If any of the above actions, including both parts of Example 2, was made as a Coordinated Expenditure as defined at PART F (1) of these Regulations such that the actions were done in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent thereof, then it would be treated as an In-kind Contribution to that candidate's campaign and would be counted as Opposing Funds on that basis but would not be a supportive or opposing Independent Expenditure. [Section 16].

d. Unreported expenditures The public may submit evidence of unreported expenditures by candidates and measure finance committees to the City Clerk. The City Clerk may use such information as a basis for finding additional matching funds should be provided to eligible participating candidates.

10. Unopposed Candidate

a. Defined. For purposes of this rule, an Unopposed Participating Candidate is a Participating Candidate who has been certified as a candidate by the City Clerk pursuant to Section 3-8-27 NMSA 1978 and who has no opponent who has been certified as a candidate on the ballot pursuant to Section 3-8-27H. NMSA 1978 and who has no write-in opponent who has been certified as a write-

in candidate pursuant Section 3-8-27 L. NMSA 1978. In the event all certified opponents and certified write-in opponents withdraw their candidacy pursuant to Section 3-8-27 NMSA, the Participating Candidate shall be considered an Unopposed Participating Candidate.

b. Notice and Payment At the time a Participating Candidate becomes an Unopposed Participating Candidate, the City Clerk shall give such candidate notice that he or she is unopposed. The Unopposed Participating Candidate shall within three City business days after receipt of such notice from the City Clerk refund all funds he or she has received from the City pursuant to the Open and Ethical Elections Code, except for expenditures allowed pursuant to the Open and Ethical Elections Code, and ~~the~~ these regulations, that have been made by the Unopposed Participating Candidate up to the day the candidate receives the notice that he or she is unopposed. The refund shall not include allowable expenditures already incurred for which payment is due.

c. Accounting The 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 obligations incurred but not yet paid. The accounting shall be submitted beginning with the second campaign finance disclosure report required pursuant to the Election Code, Section 4, and supplemental accounting shall be submitted 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 the Participating Candidate may be entitled to. The refund shall include all funds not yet spent by the Participating Candidate less amounts that the Participating Candidate is contractually obligated to pay. As the Unopposed Participating Candidate receives credits and refunds for cancelled orders or contracts for goods and services, those amounts shall be paid to the City. All payments shall be made to the "City of Albuquerque Open and Ethical Elections Fund" or "ABQ OEE FUND".

11. Property purchased from Fund distribution. Participating Candidates who purchase personal property, as allowed under Part E of these Regulations, shall be entitled to keep such property for the term of the election. If the property has a fair market value of less than \$100.00 the Participating Candidate may keep the property after the election and shall not be required to turn over such property to the City. If the property is worth more than \$100.00, it must be sold 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 to be sold at auction with the proceeds deposited back into the Fund. The property must be disposed of prior to the filing of final campaign finance disclosure reports.

Part I, the Forms, Part J, the Mayoral Timeline; and, Part K, the Council Timeline, previously part of the Regulations, are removed from the Regulations and shall be amended in accordance with the Code and Regulations by the Clerk as necessary and provided by the Clerk prior to each election.