

## **2019 REGULATIONS OF THE ALBUQUERQUE CITY CLERK FOR THE OPEN AND ETHICAL ELECTIONS CODE**

**PURPOSE:** In 2018, following the implementation of the State Local Election Act, the City Council passed Election Code Reform. In addition to bringing the City in line with the Local Election Act, the Election Reforms seek to update and modernize the City’s public financing program, and to reflect changes in policy that have emerged since the 2011 Regulation for the Open and Ethical Elections Code was implemented. 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 “OEEC,” with all citations referring to the OEEC 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 OEEC and these Regulations, the documents and forms created by the City Clerk are not part of these Regulations. These Regulations should be read in concert with the 2019 Election Code Regulations, which apply to all candidates unless the Regulation specifies otherwise.

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

**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 OEEC. These Regulations do not apply to candidates who are Non-Participating 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, unless otherwise published by the City Clerk.

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

### **PART A      DEFINITIONS**

All terms utilized herein shall have the same meaning as defined by the OEEC, unless the regulation specifically notes otherwise. This Part also contains new definitions and clarified definitions for terms contained within the OEEC.

**Applicable Spending Limit:** For a Regular Local Election, an amount that is equal to the total revenue distributed to the Participating Candidate from the Fund. The Applicable Spending Limit for a runoff election means only the total revenue distributed to the Participating Candidate for a runoff from the Fund. See OEEC §§ 3(R), 6(C) and (E), 12 (B) and (C), 14, and 15.

**Applicant Candidate:** A candidate, but not a write-in candidate, running for a Covered Office and who is seeking to be a Participating Candidate.

**Contribution:** In addition to the definition in City Charter Article XIII, § 2(g), please see the 2019 Election Code Regulations regarding the term “Contribution.”

**Coordinated Expenditure:** Please see 2019 Election Code Regulations regarding the term “Coordinated Expenditure.”

**Covered Office:** City Council or Mayor.

**Disclosure Reports:** The statements filed in the electronic campaign finance report software system of the Applicant Candidate’s Seed Money and In-Kind Contributions pursuant to the OEEC as well as other required reporting pursuant to the Election Code.

**Expenditure:** In addition to the definitions included in Article XVI, Section 3(F), please see 2019 Election Code Regulations regarding the term “Expenditure.”

**Exploratory Period:** The timeframe in which an Applicant Candidate may begin to collect Seed Money and In-Kind Contributions and may file the Declaration of Intent to Seek Public Financing. Applicant Candidates may not collect Qualifying Contributions during this timeframe.

**Fund:** The Open and Ethical Elections Fund required by OEEC § 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.”

**Immediate Family:** "Immediate Family" means the candidate’s spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, the Immediate Family of the candidate’s spouse or domestic partner.

**Independent Expenditure:** Please see 2019 Election Code Regulations regarding the term “Independent Expenditure.”

**In-Kind Contribution:** In addition to the definition in City Charter Article XVI, § 3(K), “In-Kind Contributions” are goods and services that are donated or provided to the campaign at no cost or at a cost that is less than the usual and customary charge, but do not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee. They are subject to the Contribution limits detailed in the OEEC. For additional regulations regarding In-Kind Contributions applicable to Applicant Candidates and Participating Candidates, please see the 2019 Election Code Regulations.

**Participating Candidate:** A candidate for a Covered Office who chooses to obtain financing pursuant to the OEEC and who is certified to participate by the City Clerk.

**Regular Local Election:** An election that is held on the first Tuesday after the first Monday in November in odd numbered years.

**Qualifying Contribution:** A donation of \$5.00 to the Fund in support of an Applicant Candidate and given pursuant to the OEEC 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 Applicant Candidate on the face of the check or money order. Qualifying Contributions made via credit or debit card or electronically must be made through the Clerk’s Qualifying Contribution webpage. Applicant Candidates may not accept donations in excess of \$5.00. Credit/debit card processing fees shall be deducted from the candidate’s distribution, or paid by the candidate from seed money. The City Clerk will provide the exact number of Qualifying Contributions needed for qualification as a Participating Candidate to candidates no later than three (3) working days after the candidate files his/her Declaration. OEEC §§ 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 OEEC §§ 3(Q) and 5.

**Seed Money:** Cumulative Contributions received by an Applicant Candidate of no more than \$100 per person and no more than \$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 OEEC §§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. OEEC § 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 OEEC. The City Clerk will provide the amount of the Applicable Spending Limits to Applicant Candidates at the beginning of the 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 10% of the Applicable Spending Limit (“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 OEEC. See OEEC §§ 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 Local Election is held, or day of the runoff election, if applicable. The total In-Kind Contributions cannot exceed 10% of the Applicable Spending Limit and any individual In-Kind Contribution cannot exceed 5% of the annual salary for the office being sought. OEEC § 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 (“Excess In-Kind Contribution”). Any In-Kind Contributions in excess of those allowed in the OEEC will result in a violation of the OEEC.

Persons, as defined in Art. XVI, Sec. 3(O), 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. For additional regulations regarding In-Kind Contributions applicable to Applicant Candidates and Participating Candidates, please see the 2019 Election Code Regulations.

**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. An Expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

## 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 candidates and representatives 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. Affirmation of Accuracy:** When filing their electronic reports, candidates shall affirm the accuracy of their reports under penalty of perjury by clicking the Affirmation of Accuracy box in the electronic filing system, or by executing and delivering a notarized Affidavit, in the form provided by the City Clerk, by 5:00 p.m. on the day each Disclosure Report is due.

**c. Reporting:** 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. OEEC § 9

**d. Deadlines for Reports:** All financial reports are due at 5:00 p.m. on the day the report is due. This includes filing the electronic report and the forms 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 contributor's name, street address, phone number, occupation, employer, 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 ownership or control of the entity and where business is conducted. See OEEC § 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 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 (10%) of the Applicable Spending Limit. In the event of a runoff, the aggregate amount of In-Kind Contributions shall not exceed ten percent (10%) of the Applicable Spending Limit for the runoff. The aggregate amount of Seed Money Contributions shall not exceed ten percent (10%) of the Applicable Spending Limit. .

**8. Expenditures and Contributions Before the Exploratory Period:**

**a. Expenditures:** The only funding source that Applicant Candidates may use prior to the Exploratory Period for Expenditures related to campaign activities for the City office being sought are the Applicant Candidate’s donation of Seed Money to their own campaign. No Seed Money from any other source may be accepted or expended prior to the Exploratory Period.

**b. Contributions:** Applicant Candidates may not accept contributions of any kind prior to the Exploratory Period.

**c.** An Applicant Candidate who has accepted Contributions or made Expenditures that do not comply with the requirements of this subpart may petition the City Clerk to remain eligible for certification as a Participating Candidate if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

**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. OEEC § 3(Q). The Qualifying Period is the only time during which a candidate may collect Qualifying Contributions. Collection of Qualifying Contributions during any other timeframe may result in a finding of violations by the Board of Ethics. Candidates may not collect Qualifying Contributions without first meeting with the City Clerk to receive all necessary forms and information.

**2. 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 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. In the event that there is a conflict between the number of registered voters listed of the rolls of the New Mexico Secretary of State and the Bernalillo County Clerk, the City Clerk shall determine which roll will be used. 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. OEEC § 5 (A) & (B). The City Clerk will provide the number of required Qualifying Contributions to Applicant Candidates within five (5) working days of the Applicant Candidate submitting their Declaration, or within five (5) working days of the deadlines noted above

**4. Qualifying Contribution Books:** The City Clerk shall provide Applicant Candidates with Qualifying Contribution Books (“Books”) containing either 10 or 25 three-part receipts for contributions. Applicant Candidates shall submit all Qualifying Contributions with corresponding Books containing the required information about the contributors and the required signatures.

The Books shall be pre-printed with all receipts containing the necessary notices to the contributor, except for the name of the Applicant Candidate and the candidate’s district, which candidates and their representatives must fill in after receiving the Books from the City Clerk. OEEC § 3(P). The three parts include the white original for the City Clerk, a yellow copy for the candidate, and a pink copy for the contributor.

Applicant Candidates shall obtain Books from only the Office of the City Clerk. The candidate or the candidate’s designated representative must sign an Acknowledgement for the number of Books received each time Books are provided to the candidate’s campaign. The City Clerk shall not provide the candidate with partial Books.

Candidates shall submit Books with both the white original and the yellow copy intact. The pink copies may be removed and provided to the contributor.

At the end of the Qualifying Period, Applicant Candidates shall return all Books to the Office of the City Clerk whether they are used or unused. The City Clerk shall accept partially used Books but Applicant Candidates are strongly urged to fully use Books before submitting them 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 violation of the OEEC by the Board of Ethics.

All Books containing signatures with corresponding Qualifying Contributions shall be submitted to the City Clerk no later than noon on April 1<sup>st</sup> for Mayoral Applicant Candidates and noon on June 1<sup>st</sup> for City Council Applicant Candidates. Candidates shall

return all unused Books within ten (10) days after the applicable deadline. The City Clerk shall report unreturned books to the Board of Ethics.

**5. Qualifying Contribution Website:** The City Clerk shall develop a Qualifying Contribution website, which may be used as an alternative, electronic method for collecting Qualifying Contributions. The Clerk will issue additional guidance regarding use of the website once it has launched.

**6. Soliciting and Accepting Qualifying Contributions:** Applicant Candidates and their representatives may solicit and accept Qualifying Contributions from all applicable City voters registered in the district the Applicant Candidate seeks to represent. Applicant Candidates are responsible for assuring that receipts are fully and correctly filled out, including with signatures, and that the contributor's name and address are legible. Names, dates, and addresses on the receipts may be filled out by someone other than the contributor, but the contributor himself or herself must sign the receipt. The Applicant Candidate's campaign may not cross out, white out, or otherwise remove any information the contributor has provided for the receipt, however, explanatory information may be added to the receipt if the information is necessary to validate the contribution. For example, if the contributor fills out his or her name illegibly, the campaign may print that name on the receipt, but may not cross out or remove the information provided by the contributor. All \$5 Qualifying Contributions must be paid by the contributor; if the funds are provided by any person other than the contributor who is listed on the receipt, the Qualifying Contribution will be deemed fraudulent. 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 that do not meet the requirements of this paragraph. OEEC § 3(P)

- a. Minimum Requirements For Qualifying Contributions:** A Qualifying Contribution will not be certified toward the required number of Qualified Contributions necessary to qualify an Applicant Candidate as a Participating Candidate unless it:
- i.** is made by a registered City voter residing in the district in which the Applicant Candidate desires to represent;
  - ii.** is made during the designated Qualifying Period;
  - iii.** is obtained through efforts made with the knowledge and approval of the Applicant Candidate;
  - iv.** is acknowledged by a receipt that identifies the contributor's name and physical address as shown on the New Mexico Secretary of State's voter registration rolls on forms provided by the Clerk;
  - v.** is signed by the contributor;
  - vi.** identifies which Applicant Candidate the City resident supports; and
  - vii.** is sent to the City Clerk.



- b. Date the Qualifying Contribution Was Received:** The date the Contribution was received must be on or after the Applicant Candidate files his or her Declaration of Intent and within the Qualifying Period. The date stated in the Book as the date the Contribution was received by the Applicant Candidate's campaign shall be the date attributed to the Contribution, regardless of the date written on the check or money order.
- c. Name and Registered Address of the Contributor:** The contributor must provide their name and address as shown on the New Mexico Secretary of State's voter registration rolls. Although this requirement must be pre-printed on each receipt as a notice to the contributor, it is the responsibility of the Applicant Candidate's campaign to ensure that this requirement is met. If the contributor provides an address other than their address as shown on the New Mexico Secretary of State's voter registration rolls, the campaign may print the correct registered address on the receipt, but may not cross out or remove the information provided by the contributor.
- d. Qualifying Contributions Made Via The Clerk's Qualifying Contribution Website:** Guidance specific to Qualifying Contributions made via the City Clerk's Qualifying Contribution website shall be provided once the website has launched.
- e. Qualifying Contributions To Multiple Candidates Running For The Same Office:** A registered City voter may contribute a Qualifying Contribution to more than one Applicant Candidate, provided that the requirements noted above in Subpart C(6)(a) are met.
- f. Simultaneous Collection of Petition Signatures.** Applicant Candidates may choose to gather petition signatures simultaneously with Qualifying Contributions during any overlap of the petition signature period and the Qualifying Contribution period. 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 submit petition forms at the same time they submit Books for the same voters.

**7. Contribution Reporting:** With the exception of March 1, on each Friday of the applicable Qualifying Period, Applicant Candidates shall report their Qualifying Contributions by submitting their Books and the corresponding Qualifying 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 Friday reporting 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 Friday reporting deadline following receipt of the Contribution.
- d. The final Qualifying Contribution report is due no later than noon on the City working day immediately following the expiration of the Qualifying Period, which is April 1<sup>st</sup> for Mayoral Applicant Candidates and June 1<sup>st</sup> for City Council Applicant Candidates. OEEC § 9.
- e. For each Book submitted, a corresponding amount of \$5.00 Contributions shall be attached to the Book and submitted (i.e., if the Book contains eight (8) completed white original receipts, then \$40.00 in contributions must be attached to the Book).
- f. Applicant Candidates shall submit a signed, notarized affidavit, in the form provided by the City Clerk, with each Qualifying Contribution report.
- g. Guidance specific to Contribution Reporting for Contributions made via the City Clerk's Qualifying Contribution website shall be provided once the website has launched.

**8. Verification of Qualifying Contributions:** The Office of the City Clerk will verify each and every Qualifying Contribution to assure the Contribution meets all requirements. The City Clerk will assure that the verifying 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 contribution by comparing the contributor's name, address, and signature on the receipt to the voter registration rolls, and ensuring that the requirements noted above in Subpart C(6)(a) are met.

Qualifying Contributions are accepted, rejected or left pending by the verifying staff. The City Clerk will notify Applicant Candidates of the number of accepted, rejected, and pending Qualifying Contributions each Friday of the Qualifying Period. Pending Qualifying Contributions are reviewed by a supervisor and the City Clerk to determine whether the Qualifying Contribution is accepted or rejected. In the case of a

rejected Qualifying Contribution, if there is some evidence of intentional wrong-doing the City Clerk will notify the City Attorney for further investigation. The City Clerk will consider any Qualifying Contribution submitted to the City Attorney as rejected until receiving an opinion or court order that the Qualifying Contribution is acceptable.

Guidance specific to Qualifying Contribution verification for Contributions made via the City Clerk's Qualifying Contribution website shall be provided once the website has launched.

**9. Certification of Participating Candidates for Public Financing:** The City Clerk shall certify Applicant Candidates who meet the requirements of the OEEC and who submit an Application for Certification as a Participating Candidate. 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, on the City Clerk's website, 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. OEEC § 7.

- a.** In addition to the criteria for certification listed in Art. XVI, Section 7(A), upon receipt of a final Qualifying Contribution report from an Applicant Candidate, the Clerk shall determine whether the Applicant Candidate has:
  - i.** been found to have accepted Contributions in excess of the pre-and post-Exploratory Period limitations set forth in the OEEC, and has otherwise complied with Seed Money and In-Kind restrictions;
  - ii.** run for the same office as a Non-Participating Candidate in the same election year;
  - iii.** been found to have made a material false statement in a report or other document submitted to the City Clerk;
  - iv.** failed to pay any civil penalty assessed by the City Clerk or Board of Ethics, except that a candidate has three (3) working days from the date of the request for certification to pay the outstanding penalty and remain eligible for certification; and
  - v.** been found to have submitted any fraudulent Qualifying Contributions or any falsified acknowledgement forms for Qualifying Contributions or Seed Money Contributions, where the Applicant Candidate knew or should have known of the fraudulence or falsification.
- b.** If the Clerk makes any of the findings above, the Clerk shall not certify the Applicant Candidate as a Participating Candidate.

- c. An Applicant Candidate whose certification has been denied may appeal the Clerk’s determination as provided in Art. XVI, Section 20.

**10. 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. Qualifying Contributions to the Applicant Candidate shall not be refunded.

**11. Revocation of Certification.** The certification of a Participating Candidate may be revoked at any time if the City Clerk determines that the candidate or an agent of the candidate:

- a. Did not submit the required number of valid Qualifying Contributions;
- b. Failed to qualify as a candidate by petition or other means;
- c. Submitted any fraudulent Qualifying Contributions or Qualifying Contributions that were not made by the named contributor, and the Participating Candidate knew or should have known of the fraudulence;
- d. Misrepresented to a contributor the purpose of the Qualifying Contribution or obtaining the contributor’s signature on the receipt and acknowledgement form and the Participating Candidate knew or should have known of the misrepresentation;
- e. Failed to fully comply with the Seed Money and In-Kind restrictions;
- f. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under the OEEC or the Election Code; or
- g. Otherwise substantially violated the provisions of the OEEC or the Election Code.

The determination to revoke the certification of a candidate must be made by a vote of the members of the Board of Ethics after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the City Clerk within three (3) working days of the Board of Ethics’ decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty.

Notwithstanding Article XVI, Section 20, the candidate may appeal the Board of Ethics’ decision to revoke certification in the same manner provided in Article XII, Section 8, subsection (f) of the City Charter.

## **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 City Clerk and 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. OEEC § 14.
  
  - c. Initial Distribution:** Subject to availability of funds, the City Clerk shall distribute funds as outlined in OEEC §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 registered voter in the district, minus the total Seed Money collected by the candidate. Funding in addition to the initial distribution is subject to availability of funds. OEEC §§ 12 and 14.
  
- 3. Expenditures:** The guidelines regarding Expenditures detailed below are in addition to the guidelines and restrictions on Expenditures that are contained in Article XVI, Section 8 of the City Charter, and the 2019 Election Code Regulations regarding Expenditures.
  - a. PERMISSIBLE EXPENDITURES.** Expenditures for “campaign-related purposes” are those which are traditionally accepted as necessary to promote the election of a candidate to political office. Candidates using OEEC funds must also take into account the public nature of the funds, the underlying objectives of the OEEC, and the reasonableness of the Expenditures under the circumstances. In the City of Albuquerque, traditional campaign expenses have included, but are not limited to:
    - i.** Political advertising expenses;

- ii. Campaign communications such as signs, bumper stickers, T-shirts, or caps with campaign slogans, etc.;
- iii. Campaign events (e.g., invitations, food, tent or hall rental, etc.);
- iv. Printing and mailing costs;
- v. Campaign staff expenses;
- vi. An entry fee for an event organized by a committee, charity, or community organization or an ad in an event publication, as long as the Expenditure benefits the candidate's campaign;
- vii. Candidate's campaign-related childcare, provided it is not provided by a member of the candidate's Immediate Family; and
- viii. Campaign operational and travel expenses, such as fuel and tolls, websites, office rental, telecommunications, equipment, or office supplies.

**b. PROHIBITED EXPENDITURES.** Candidates may not use OEEC funds for personal expenses or for invalid political expenses, as detailed below. This means candidates may not borrow from or use OEEC funds for personal or other non-campaign expenses, even if temporarily and with the intention of repaying the funds.

i. Personal expenses are for goods and services that the candidate would otherwise purchase independently of the campaign, including but not limited to:

- 1) Day-to-day household expenses and supplies;
- 2) Mortgage, rent, or utility payments for the candidate's personal residence, even if part of the residence is being used by the campaign;
- 3) Vehicle repair and maintenance;
- 4) Non-campaign transportation expenses;
- 5) Clothing, including attire for political functions such as business suits or shoes.

ii. OEEC funds also may not be spent to:

- 1) Pay a consultant, vendor, or campaign staff for anything other than campaign goods or services;
- 2) Compensate the candidate for services provided by the candidate;
- 3) Make Independent Expenditures supporting or opposing any candidate, ballot question, or political committee;

- 4) Assist in any way the campaign of any candidate other than the candidate for whom the funds were originally designated;
  - 5) Contribute to another candidate, a political committee, a measure finance committee, or a party committee other than in exchange for goods and services;
  - 6) Make a donation to a charity or a community organization, other than in exchange for campaign goods or services;
  - 7) Promote political or social positions or causes other than the candidate's campaign;
  - 8) Make a thank-you gift (including a gift card) to a volunteer or supporter; or
  - 9) Pay any civil or criminal penalties, fines, or forfeitures.
- c. **Ballot Questions.** Candidates may state their position with respect to a ballot question in a communication financed with OEEC funds. Candidates may not use OEEC funds for a paid communication that primarily supports or opposes a ballot measure, referendum, or citizen initiative.
- d. **Campaign Training.** Candidates may use OEEC funds for tuition or registration costs for campaign or policy issues training.
- e. **Car Travel.** OEEC campaigns may reimburse the candidate or campaign workers for their car travel, as long as the person reimbursed has kept a *contemporaneous* travel log. The campaign may make a travel reimbursement up to the number of miles traveled as reported in the log multiplied by the current standard IRS mileage rate for a business. Campaigns must keep the travel logs for three years, and provide them to the Board of Ethics or City Clerk if requested. Candidates and their spouses/domestic partners may spend any amount of their personal funds for campaign travel without seeking reimbursement. Other individuals may spend up to \$250 of their personal funds to pay for travel without making a Contribution to the campaign.
- f. **Food.** Candidates may spend reasonable amounts of OEEC funds on food for campaign events or to feed volunteers while they are working, but must take into account the public nature of OEEC funding. Candidates may not use OEEC funds to purchase food that is consumed *only* by the candidate and/or members of the candidate's Immediate Family. Generally, reasonable amounts for food should not exceed \$25 per person per event. If candidates wish to spend greater amounts per

person for food, the City Clerk recommends that the candidate contact the City Clerk for guidance.

- g. Lodging.** Candidates may use OEEC funds to pay for lodging other than the candidate's primary residence or the residence of the candidate's Immediate Family, if necessary for campaign purposes, but must keep lodging expenses reasonable and may not exceed fair market values. OEEC candidates may use personal funds for lodging, provided that they are not reimbursed by others.
- h. Office Supplies.** Candidates may spend OEEC funds for office supplies that they reasonably anticipate will be used for campaign purposes only. OEEC funds may not be spent for office supplies to be used for constituent communications or for other expenses associated with service as a public official. The Board of Ethics may require candidates to repay their campaign for any office supplies with a value of \$500 or more that were not used for campaign purposes or were used minimally for campaign purposes
- i. Post-Election Notes and Parties.** Candidates may spend up to \$1,000.00 maximum amounts of OEEC funds on post-election parties, post-election thank you notes, or post-election advertising to thank supporters or voters. Candidates may also use personal funds for these purposes.
- j. Property and Equipment.** Goods purchased with OEEC funds for \$50 or more that could be converted to personal use after the campaign (e.g., computers, cell phones) must be sold in an arms length transaction and the proceeds returned to the Fund no later than 45 days after the final report for the campaign. If the campaign sells the property or equipment to the candidate or a member of the candidate's Immediate Family or campaign staff, the campaign must receive at least 75% of the original purchase price paid by the campaign. Candidates are welcome to lease electronic and other equipment.
- k. Salary and Compensation.** Candidates may use OEEC funds to pay for campaign-related services by staff or consultants, provided that compensation is made at fair market value and sufficient records are maintained to show what services were received. Documentation must include a description of the labor performed by the staff member or consultant, and an itemization of any goods or services purchased from other vendors including date, vendor, and amount. In any documentation that provides for the sale of goods or service to or by a campaign, a sale for nominal consideration is presumed to be a donation.



#### **4. Paying Campaign Funds to Family Members:**

##### **a. Disclosing A Payment To A Member Of The Candidate's Family Or Household**

- i.** If a candidate uses OEEC funds to pay or reimburse a member of the candidate's "Immediate Family" (defined above), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's Immediate Family, the candidate must disclose the family or household relationship (e.g., "spouse," "domestic partner," "brother," "roommate," or "business owned by daughter") in the campaign finance report.

##### **b. Additional Restrictions For OEEC Candidates**

- i.** A candidate may not pay OEEC funds to:
  - 1)** The candidate or a sole proprietorship owned by the candidate,
  - 2)** A member of the candidate's Immediate Family or household,
  - 3)** A business entity in which the candidate or a member of the candidate's Immediate Family or household holds a significant proprietary or financial interest, or
  - 4)** A nonprofit entity in which the candidate or a member of the candidate's Immediate Family or household is a director, officer, executive director or equivalent, or chief financial officer or equivalent.
- ii.** There are two narrow exceptions to this prohibition:
  - 1)** Permitted Payments to the Candidate and Household Members.

A candidate may use OEEC funds to pay a member of the candidate's Immediate Family or household, a business entity in which the candidate or a member of the candidate's Immediate Family or household holds a significant proprietary or financial interest, or a nonprofit entity in which the candidate or a member of the candidate's Immediate Family or household is a director, officer, executive director or chief financial officer only if the Expenditure is made:

    - A.** For a legitimate campaign-related purpose; to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business, and in an amount that is reasonable taking into

consideration current market value and other factors the Board of Ethics may choose to consider; and

- B. The candidate provides documentary evidence that the Expenditure qualifies for the exception at the time the Expenditure is reported or when the City Clerk or Board of Ethics requests such evidence, whichever is sooner. This evidence must consist of documentation that the payee currently is employed by or engaged in a business that provides the goods or services provided; justification for the amount of the Expenditure including the usual price paid by other clients; and an explanation of why the Expenditure is campaign-related. Occasional or sporadic employment on political campaigns (e.g., field work, public relations, or organizing volunteers) will be insufficient to demonstrate a normal course of business.

- 2) Reimbursements. Reimbursements, including travel reimbursements, that are made in accordance with the City Clerk and Board of Ethics rules and guidelines are exempt from this restriction. However, the candidate must disclose the family or household relationship when reporting the reimbursement as described above. If an OEEC candidate or a family or household member uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate must reimburse the individual with OEEC funds.

**5. Payment of Funds to City:** Participating Candidates shall return all funds that are unspent or unencumbered as of the date of the Regular Local Election to the City Clerk for deposit into the Fund. The date of the Regular Local 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. OEEC § 8(C)

**6. 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 OEEC § 8(C). Runoff candidates shall return and report funds as required and shall receive payment from the Fund pursuant to the OEEC for

runoff elections within three working days after certification of the local election.

- b. Within three (3) 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 Fund and shall disclose all payments of refund payments to the City Clerk required by the OEEC 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. OEEC §§ 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. If a candidate desires to opt out for a run off they must give the Clerk written notice of their decision to opt out within one (1) working day of certification of the election.
- f. **Runoff Election Reports:** The reporting requirements for Participating Candidates in a runoff election include filing campaign Disclosure Reports as follows:
  - i. beginning on the first Monday following the regular election, by 5:00 p.m. on every Monday before the run-off election candidates shall file a report of all Expenditures made and Contributions received on or before the previous Friday and not previously reported;
  - ii. beginning on the Friday before the run-off election, any Contribution or pledge to contribute that is for five hundred dollars (\$500) or more shall be reported to the City Clerk in a supplemental report on a prescribed form within twenty-four hours of receipt; and
  - iii. by 5:00 p.m. on the thirtieth day after a run-off election, a final report of all Expenditures made and Contributions not previously reported.

**7. 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) working 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) working days of receipt.
- c. Fundraising After Return of Funds:** Once all unencumbered funds have been returned to the Fund, and Unopposed Candidate ceases to be a Participating Candidate, and is not subject to the contribution and Expenditure limits applicable to Participating Candidates.

**8. Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with OEEC funds loses its campaign-related purpose following the election. Such property and equipment purchased for \$50 or more must be liquidated at in an arms length transaction, and the proceeds thereof reimbursed to the OEEC Fund as unspent fund revenues in accordance with Article XVI, Section 8(C) of the City Charter. Candidates may not return unsold property or equipment to the City Clerk.

- a. The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
- b. Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value. A campaign's sale of property or equipment through an on-line commercial auction shall be considered by the Board of Ethics as a factor in favor of determining that the campaign has recovered the fair market value of the property or equipment.
- c. If the campaign sells the property or equipment to the candidate or a member of the candidate's Immediate Family or campaign staff, the campaign must receive at least 75% of the original purchase price.

## **PART E 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 OEEC if they continue as a non-Participating Candidate.

**2. Participating Candidates:** A Participating Candidate may withdraw their participation as a publicly financed candidate up to thirty (30) days after being certified as a Participating Candidate by filing the statement of withdrawal with the City Clerk on the approved form. Withdrawn Participating Candidates may continue their campaign as a non-Participating Candidate or withdraw from a race completely as stated in OEEC § 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

shall deliver to the City Clerk the funds as outlined in OEEC § 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 Part to other Participating Candidates in the present election cycle for the Regular Local Election. However, the City Clerk may use the returned funds to correct a distribution reduction caused by Section 14(B) of the OEEC.

Approved:

\_\_\_\_\_  
Sarita Nair, Chief Administrative Officer

\_\_\_\_\_  
Date

Recommended:

\_\_\_\_\_  
Katy Duhigg, City Clerk

\_\_\_\_\_  
Date