

Report and Recommendations of the
2015 City Charter Review Task Force

City of Albuquerque, New Mexico

June 15, 2015

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June 15, 2015

The Honorable Richard J. Berry,
Mayor, City of Albuquerque
The Honorable City Councilors
One Civic Plaza
Albuquerque, NM 87102

Dear Mayor Berry and City Councilors:

This is the final report of the 2015 City of Albuquerque Charter Review Task Force. This Task Force was established by Resolution 15-168 which was passed on February 18, 2015 and enacted on March 4, 2015. The Task Force consisted of 14 members with one member selected by each of the Councilors, four members appointed by the Mayor and the Chair of the Task Force selected by the Council. The Task Force has held nine (9) meetings since April 30, 2015. The time and place of each meeting, the minutes of each as well as the meeting agenda, were available on the City of Albuquerque's website. The Task Force allowed public comment whenever requested, held one public hearing, and the public was also invited to send suggestions or comments to the Task Force electronically.

Sincerely,
Robert White, Chair

The Charge of the Task Force

The 2015 Charter Review Task Force was charged with examining the City Charter for the purpose of recommending amendments. The charge included, but was not limited to the following:

1. Potential Council remedies in the event a timely Mayoral appointment is not presented for position which require the advice and consent of the Council; and
2. Potential Council remedies in the event timely appointments are not made to the “Intragovernmental Conference Committee” established under Article XIX of the Charter in 2009; and
3. The provision of the Charter that requires nine and only nine Council Districts so as to potentially allow more than nine districts; and
4. The provision relating to public financing of campaigns and other election provisions in need of update or revision; and
5. The provision in the Charter requiring photo identification for voters in regular municipal elections.

Review and Recommendations

Article V Mayor

Discussion of Potential Council remedies in the event a timely Mayoral appointment is not presented for position which require the advice and consent of Council

- The Task Force voted on a 7 to 6 vote to recommend clarifying language to Article V. Section 4. Duties of the Mayor concerning the appointment and reappointment of the City Attorney and the City Clerk.

See Article V Proposal

Article XIII Election Code

- The Task Force voted on a 7 to 6 vote to recommend the included proposal for Article XIII to the Council for consideration.

See Article XIII Proposal

Voter Photo Identification Requirements in Regular Municipal Elections

- The Task Force voted on an 8-6 vote to maintain the current system of voter identification.

Article XVI Open and Ethical Elections Code

Public Financing of Campaigns and other elections provisions

- The Task Force voted on a 9 to 5 vote to recommend the included proposal for Article XVI to the Council for consideration.

See Article XVI Proposal

Article XIX Determination of Separation of Powers Issues under the Charter

Discussion of Potential Council remedies in the event timely appointments are not made to the “Intragovernmental Conference Committee” established under Article XIX of the Charter in 2009

- Reviewed with no changes recommended at this time. The motion carried on a 12-0 vote. Mr. Bruce Thompson abstained from voting

Charter of the City of Albuquerque / Appendix A: Nine Council Districts Identified

- Reviewed with no changes to the number of Council Districts recommended at this time. The motion passed unanimously.

Additional Matters Considered by the Task Force

- The Task Force recommends that its work be continued at least through December 31, 2015. A number of additional issues were identified for consideration by the Task Force, such as evaluating a scheduling process for conducting the run-up to elections during post-census years in which the Council redraws its District lines. However, time constraints did not permit review

of such notable issues because the Task Force focused its initial period on those recommendations that needed Council's consideration at this time in order to meet deadline requirements for any to be included, if accepted by the Council, on the next City election ballot on October 6, 2015. The motion to recommend such an extension passed 9 to 4.

APPENDIX

Resolution 15-168

CITY of ALBUQUERQUE TWENTY-FIRST COUNCIL

COUNCIL BILL NO. R-15-168 ENACTMENT NO. _____

SPONSORED BY: Don Harris

RESOLUTION

CREATING A TASK FORCE TO REVIEW THE CHARTER OF THE CITY OF ALBUQUERQUE AND MAKE RECOMMENDATIONS ON CERTAIN POTENTIAL REVISIONS.

WHEREAS, the City Charter which created Albuquerque's current form of government was adopted by the voters in 1974; and

WHEREAS, City Charter Review Task Forces were established in 1988, 1998, and 2009 to revisit the Charter and to make recommendations for improving and refining the Charter in light of changes brought about by population growth, annexation and the complexity of issues facing the City; and

WHEREAS, each Task Force recommended changes to the Charter which were proposed as Charter Amendments and put before the voters in 1989, 1999, and 2009 respectively and in each case several of the proposed amendments were approved by the voters; and

WHEREAS, approximately five years have passed since the last Charter Review Task Force was assembled to analyze the Charter provisions, and in

that time several critical issues have materialized relating to the requirements of the Charter; and

WHEREAS, it is timely to convene a Charter Review Task Force to provide an analysis of certain City Charter matters, and whether certain revisions should be proposed to improve the City's governmental structure and operations; and

WHEREAS, the Charter Review Task Force created by this resolution should submit its recommendations to the Council in time for placement on the ballot for the October 6, 2015, regular municipal election.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. CREATION OF A CHARTER REVIEW TASK FORCE

A. A 14 member City Charter Review Task Force is established to review the City Charter and evaluate provisions that should be amended, added or deleted.

B. The Task Force shall be made up of the following members, each of whom is required to be a resident of the City of Albuquerque:

1. One member selected by each Councilor;
2. One at-large member selected by the full City Council who shall chair the Task Force; and
3. Four members appointed by the Mayor.

C. The Task Force shall hold its first meeting as soon as possible after the appointment of a majority of members, and shall provide its recommendations for City Charter amendments in a report to the Council and the Mayor on or before June 15, 2015. Upon presentation of its recommendations, the Task Force may be discharged or may continue at the direction of the Council.

D. The charge of the Task Force shall be to examine the City Charter for the purpose of recommending amendments. The charge includes but is not limited to examination of the following:

1. Potential Council remedies in the event a timely Mayoral appointment is not presented for positions which require the advice and consent of the Council; and

2. Potential Council remedies in the event timely appointments are not made to the “Intragovernmental Conference Committee” established under Article XIX of the Charter in 2009; and

3. The provision of the Charter that requires nine and only nine Council Districts so as to potentially allow more than nine districts; and

4. The provisions relating to public financing of campaigns and other election provisions in need of update or revision; and

5. The provision in the Charter requiring photo identification for voters in regular municipal elections.

E. As an advisory task force, meetings of the Charter Review Task Force are not strictly subject to the New Mexico Open Meetings Act, but the Task Force shall nonetheless meet only in open meetings that, as a matter of policy, generally adhere to standards of the Open Meetings Act relating to notice and accessibility by the public. The Task Force shall hold at least one public hearing during which input from the public will be sought.

F. The Council and the Administration shall provide staffing and resources to the Task Force.

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this resolution is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The Council hereby declares that it would have passed this resolution and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 3. EFFECTIVE DATE. This resolution is effective immediately.

**CITY of ALBUQUERQUE
TWENTY-FIRST COUNCIL**

COUNCIL BILL NO. P-15-14 ENACTMENT NO. _____

SPONSORED BY: DON HARRIS

CHARTER AMENDMENT PROPOSAL

ADOPTING A PROPOSITION TO BE SUBMITTED TO THE VOTERS AT THE OCTOBER 6, 2015 CITY OF ALBUQUERQUE MUNICIPAL ELECTION THAT AMENDS ARTICLE V SECTION 4 OF THE CHARTER OF THE CITY OF ALBUQUERQUE CONCERNING THE APPOINTMENT AND REAPPOINTMENT OF THE CITY ATTORNEY AND CITY CLERK.

WHEREAS, The 2015 Charter Review Task Force was established to review the Charter of the City of Albuquerque and make recommendations relating to various provisions; and

WHEREAS, The 2015 Charter Review Task Force has held nine (9) meeting since April 30, 2015 that have been open to the public, including one public hearing; and

WHEREAS, The Task Force considered revisions that would clarify appointment terms for both the City Attorney and the City Clerk.

BE IT PROPOSED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. The City Clerk shall place the complete text of the below summary, title and proposition on the ballot at the October 6, 2015 City of Albuquerque municipal election and the City of Albuquerque qualified voters shall be permitted to vote “for” or “against” the proposition:

SUMMARY

Proposing amendments be made to Article V Section 4. Duties of the Mayor to include clarification on the appointment and reappointment of the City Attorney and City Clerk:

TITLE & PROPOSITION

PROPOSING TO AMEND ARTICLE V SECTION 4 OF THE ALBUQUERQUE CITY CHARTER CONCERNING THE APPOINTMENT AND REAPPOINTMENT OF THE CITY ATTORNEY AND CITY CLERK:

“Section 4. DUTIES OF THE MAYOR.

The Mayor shall:

- (a) Organize the executive branch of the city;**
- (b) Exercise administrative control and supervision over and appoint directors of all city departments, which appointments shall not require the advice or consent of the Council except as provided in (d) of this Section;**
- (c) Be responsible for the administration and protection of the merit system;**
- (d) With the advice and consent of the Council, appoint the Chief Administrative Officer and deputy administrative officers. Appointees and reappointees requiring the advice and consent of the Council shall be presented to the Council for confirmation within 45 days after the Mayor takes office or after a vacant appointed position is filled. When an appointee or reappointee is presented to and not confirmed by the Council, the Mayor shall, within 60 days thereafter, nominate another person to fill the position, and the Mayor may continue to nominate until confirmation;**
- (e) Select and remove the City Attorney only as follows:**
 - 1. The City Attorney shall be selected ~~and appointed~~, or reappointed through an ~~open and competitive~~ hiring process conducted by the Mayor with the advice and consent of two-thirds of the entire membership of the Council.**

2. The City Attorney's appointment shall be for a four year term that coincides and terminates with the term of the Mayor making the appointment or reappointment unless sooner removed as provided herein. For purposes of this subsection 4(e)2 the four year term of the City Attorney shall end after four years even if the Mayor making the appointment is reelected. A City Attorney appointed to fill a vacant City Attorney position shall only fill the remainder of the term of the City Attorney vacating the position. An appointee or reappointee who does not receive the consent of two-thirds of the entire membership of the Council shall not serve or act as the City Attorney, and the Mayor shall select and appoint another City Attorney in accordance with the process set forth in this subsection 4(e).

3. The City Attorney may only be removed from office for cause by the Mayor with the concurrence of two-thirds of the entire membership of the Council after cause has been determined by the Director of the Office of Internal Audit and Investigations.

(f) Select and remove the City Clerk only as follows:

1. The City Clerk shall be selected ~~and appointed~~ or reappointed through an ~~open and competitive~~ hiring process conducted by the Mayor with the advice and consent of two-thirds of the entire membership of the Council.

2. The City Clerk's appointment shall be for a four year term that coincides and terminates with the term of the Mayor making the appointment or reappointment unless sooner removed as provided herein. For purposes of this subsection 4(e)2 the four year term of the City Clerk shall end after four years even if the Mayor making the appointment is reelected. A City Clerk appointed to fill a vacant City Clerk position shall only fill the remainder of the term of the City Clerk vacating the position. An appointee or reappointee who does not receive the consent of two-thirds of the entire membership of the

Council shall not serve or act as the City Clerk, and the Mayor shall select and appoint another City Clerk in accordance with the process set forth in this subsection 4(e).

3. The City Clerk may only be removed from office for cause by the Mayor with the concurrence of two-thirds of the entire membership of the Council after cause has been determined by the Director of the Office of Internal Audit and Investigations.”

SECTION 2. TIME OF FILING WITH THE CITY CLERK. The Director of City Council Services, or designee, shall file the proposed amendment described in Section 1 above with the City Clerk within the ninety days immediately preceding the October 6, 2015 City of Albuquerque municipal election.

SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this proposition is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this proposition. The Council hereby declares that it would have passed this proposition and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 4. EFFECTIVE DATE. This proposition is effective immediately. The Charter Amendment described in Section 1 of this proposition shall take effect immediately following the certification of the election if approved by the voters.

**CITY of ALBUQUERQUE
TWENTY-FIRST COUNCIL**

COUNCIL BILL NO. P-15-13 ENACTMENT NO. _____

SPONSORED BY: DON HARRIS

CHARTER AMENDMENT PROPOSAL

ADOPTING A PROPOSITION TO BE SUBMITTED TO THE VOTERS AT THE OCTOBER 6, 2015 CITY OF ALBUQUERQUE MUNICIPAL ELECTION THAT AMENDS ARTICLE XIII OF THE CHARTER OF THE CITY OF ALBUQUERQUE CONCERNING ELECTION CODE.

WHEREAS, The 2015 Charter Review Task Force was established to review the Charter of the City of Albuquerque and make recommendations relating to various provisions; and

WHEREAS, The 2015 Charter Review Task Force has held nine (9) meeting since April 30, 2015 that have been open to the public, including one public hearing; and

WHEREAS, The Task Force considered recent court rulings that relate to Election Code; and

WHEREAS, Article XIII of the City Charter is cited as the “Elections Code”.

BE IT PROPOSED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. The City Clerk shall place the complete text of the below summary, title and proposition on the ballot at the October 6, 2015 City of Albuquerque municipal election and the City of Albuquerque qualified voters shall be permitted to vote “for” or “against” the proposition:

SUMMARY

Proposing amendments be made to Article XIII. Elections Code to include:

TITLE & PROPOSITION

PROPOSING TO AMEND ARTICLE XIII OF THE ALBUQUERQUE CITY CHARTER CONCERNING THE ELECTION CODE:

"Section 1. Declaration of Policy.

Public disclosure and regulation of certain campaign practices will serve to increase public confidence in the integrity of government by informing the public of the qualifications of a candidate Candidate for elective office and of the possible sources of influence upon that candidate Candidate and of the financing of a campaign to influence the passage or defeat of a measure Ballot Question. The principle that the candidate Candidate assumes ultimate and complete responsibility for the conduct of ~~the~~ his or her campaign is therefore incorporated ~~into~~ into this Charter and shall be implemented according to this Election Code.

Section 2. Definitions.

(a) "Anonymous Contribution" means a ~~contribution~~ Contribution received by a candidate Candidate or a ~~Measure Finance~~ Political Advocacy Committee for which the contributor cannot be identified. ~~Contributions received by a host pursuant to Section 4(j) of this Election Code shall not be considered anonymous contributions.~~

(b) "Board" means the Board of Ethics and Campaign Practices established pursuant to Article XII of this Charter.

(c) "Campaign Materials" means any published, printed or broadly distributed campaign advertising or communications such as newspaper advertisements, handbills, petitions, circulars, letters, radio or TV broadcasts, cable distributions, social media sites, websites, or electronic or telephonic transmissions, including ~~organized phone-banking or~~ recorded phone messages, ~~or similar written material that~~

are used in a campaign by a candidate Candidate or a Political Advocacy Measure Finance Committee.

(d) "Candidate" means any individual who has (1) obtained a nominating petition from the City Clerk pursuant to Section 4(c)1.D. of this Election Code for the office of Mayor or Councilor, or (2) filed an affidavit on a form approved by the City Clerk, stating that he or she is a candidate Candidate for [either the office of] Mayor or City Councilor, or (3) filed as a candidate Candidate for elected office as required by law, or (4) publicly announced his or her candidacy for Mayor or Council, or (5) has accepted a financial or in-kind Contribution or Contributions that exceed a grand total value of \$250, or made expenditures that exceed a grand total of \$250, in support of his or her election to the office of Mayor or Councilor, whichever first occurs.

(e) "Candidate Finance Committee" consists of the ~~candi-date~~ Candidate, the ~~candidate~~ Candidate's treasurer, and any person authorized either expressly or by implication by the ~~candidate~~ Candidate to participate in the solicitation, receipt, expenditure, or employment of ~~contribution~~ Contributions on behalf of the ~~candidate~~ Candidate. "Member of the Candidate Committee" means any such person.

(f) "Candidate's Treasurer" means the person who is appointed by a ~~candidate~~ Candidate to receive, keep, and disburse all money which may be collected, received, or disbursed by the ~~candidate~~ Candidate, the Candidate Finance Committee, or any of its ~~members~~ Members.

(g) "Contributions" means:

1. ~~Monies, loans, debts incurred, obligations incurred, A payment, gift, or loan or pledge of money or any thing of value, including property any in-kind services or tangible items, including or the use thereof, or commercial or professional services:~~

A. ~~Incurred or received by Given to a candidate Can-didate, the candidate Candidate's treasurer, the Candidate Finance Committee, or a member thereof on behalf of the candidate Candidate, or by to a Measure Finance Political Advocacy Committee or a member thereof on behalf of the Candidate or Candidate Finance Committee, for the purpose of supporting in any way the election or defeat of a Candidate or the passage or defeat of a Ballot Questions For the purposes of this Subsection, a debt or obligation shall be considered incurred at the time authorization is given or contract made for the debt or obligation.; or~~

B. ~~Not received by given to a person or any Person or entity named in Subparagraph A above, but expended or employed on behalf of by any other Person in cooperation, consultation, or concert with, or at the express or implied, direct or indirect, request of suggestion of a Person or entity named in Subparagraph A to support the election or defeat of a Candidate or the passage or defeat of a Ballot Question ; where such monies, loans, debts incurred, obligations incurred, or property in-kind, or commercial or professional services have been solicited or otherwise consented to by such committee or have been expended or employed in a manner or amount directed, authorized, either expressly, by implication, or consented to by such committee.~~

2. Contributions of property services or tangible items, including the use thereof, and ~~contributions of commercial or professional services~~ shall be attributed a cash value equal to their fair market value.

3. Notwithstanding the foregoing, none of the following shall be considered a ~~contribution~~ Contribution: a candidate Candidate's own services and property, other than cash contributed or loaned; the personal, non-professional services of any volunteer for any campaign purpose(s) or the expenses incurred by the any volunteer in performing such services; the use of a dwelling unit and or residential premises incidental thereto, ~~for any campaign purpose and~~ including the provision of refreshments and entertainment attendant resources or supplies in connection with such use; ~~the services of the person who is performing the duties of the candidate's treasurer;~~ and the use of vehicles for any campaign purpose ~~other than in connection with the performance of a commercial or professional service.~~

(h) "Early Voter" means a voter who votes in person before election day, and has not been issued an absentee ballot at the time the voter presents himself at an early voting location.

(i) "Election" means any City of Albuquerque municipal election, including special, run-off, or recall elections.

(j) "Expenditure" means the payment or furnishing of money or anything of value or the incurring ~~or repayment~~ of indebtedness or obligation to any person, by or on behalf of any person, candidate or political committee in consideration for any services, supplies, equipment, promotion, or other thing of value performed or furnished ~~for any reason, including support of or opposition to a candidate or political committee~~ for the purpose of supporting the election or defeat of a Candidate or the passage or defeat of a Ballot Question or for reducing the campaign debt of a candidate Candidate or political Measure Finance Political Advocacy Committee. ~~or to pay for a communication covered by subsection 4(j)(1) of this Election Code.~~

(k) "~~Measure~~ Ballot Question" means any proposition submitted to a popular vote at an election, ~~whether by including an initiative, referendum, or proposed recall procedure or otherwise or proposed charter change or amendment.~~

(l) "~~Measure Finance~~ Political Advocacy Committee" means a ~~political committee or any person or combination of two or more persons, other than a Candidate Finance Committee, having the primary purpose of acting jointly in aid support of or in opposition to the effort of anyone seeking to have their name placed on the ballot for city office, a petition to place a measure question on the ballot pursuant to Article III or Article VI of this Charter, voter approval or disapproval of one or more measures on the ballot a Measure~~ Ballot Question and/or the election to, ~~or recall from, office or defeat of one or more candidate Candidates for office when such person or people have combination of persons has accepted money contributions in excess of \$250 \$1,000 or make made expenditures of money in excess of \$250 \$1,000 for any of the purposes listed heretofore.~~

(m) "Person" means any individual, including the Candidate, cooperative association, club, corporation, company, firm, partnership, joint venture syndicate, profit or nonprofit organization, or any other entity.

Section 3. Disclosure with Declaration of Candidacy.

Each ~~candidate~~ Candidate shall file with the Board, within two days of filing the Declaration of Candidacy with the City Clerk, a notarized statement, signed by the ~~candidate~~ Candidate under oath, setting forth a listing of the ~~candidate~~ Candidate's membership's and positions, if any,

in professional organizations, and any source of income that accounts for 5% or more of the ~~candidate~~ Candidate's total income, and any known present business relationships the ~~candidate~~ Candidate has or may have with the city, and any and all real estate interests held by the ~~candidate~~ Candidate within ~~Bernalillie~~ Bernalillo County, excluding the ~~candidate~~ Candidates' primary residence.

Section 4. Campaign Financing.

(a) One Candidate Finance Committee. Each ~~candidate~~ Candidate shall establish no more than one Candidate Finance Committee and shall appoint a treasurer who shall not be the ~~candidate~~ Candidate.

(b) One Bank Account - Filing Requirements.

1. Each ~~candidate~~ Candidate or the ~~candidate~~ Candidate's treasurer and each ~~Measure-Finance~~ Political Advocacy Committee shall establish one and only one campaign bank checking account for each election. All parties having signature authorization for the checking account, the checking account number, and the bank branch name shall be registered with the Board upon filing a Declaration of Candidacy or formation of a ~~Measure-Finance~~ Political Advocacy Committee.

2. All contributions of monies received for the benefit of the ~~candidate~~ Candidate's campaign or the ~~Measure-Finance~~ Political Advocacy Committee shall be deposited in that account, and all disbursements shall be made from that account.

3. Each ~~candidate~~ Candidate and each ~~Measure-Finance~~ Political Advocacy Committee shall file with the bank at which the campaign checking account has been established a letter authorizing the release

of information concerning that account to the Board and shall submit a copy of the letter of authorization to the Board. Upon the request of the Board, each ~~candidate~~ Candidate, the ~~candidate~~ Candidate's treasurer, or the chairperson or treasurer of each ~~Measure-Finance~~ Political Advocacy Committee shall provide to the Board all bank records, cancelled checks, and any other financial information relating to the campaign as may be requested by the Board.

(c) Disclosure of Campaign Financing.

1. Each ~~candidate~~ Candidate for the office of Mayor or ~~Councillor~~ Councilor and each ~~Measure-Finance~~ Political Advocacy Committee, shall file with the Board the statements required in Section 4(c)2. of this Election Code, each of which shall be cumulative, signed under oath by the ~~candidate~~ Candidate or the ~~candidate~~ Candidate's treasurer, or by the chairperson or treasurer of the ~~Measure-Finance~~ Political Advocacy Committee, setting forth, up through ~~to~~ 5:00 p.m. of the day preceding the filing of each statement:

A. The total of all ~~contributions~~ Contributions, which shall include all ~~contributions~~ Contributions received, regardless of whether the ~~contribution~~ Contribution has been deposited in the ~~candidate~~ Candidate's or ~~Measure-Finance~~ Political Advocacy Committee's campaign bank checking account. A ~~contribution~~ Contribution is deemed received when a ~~candidate~~ Candidate or a ~~Measure-Finance~~ Political Advocacy Committee or any agent of a ~~candidate~~ Candidate or a ~~Measure-Finance~~ Political Advocacy Committee receives a ~~contribution~~ Contribution or the benefit of the ~~services donated~~ thereof.

B. When the contributor is an individual, the name of the contributor, the contributor's principal business or occupation, the

name and address of the contributor's employer, or, if self-employed, the address of the contributor's business, and the nature of the contributor's or the contributor's employer's business. If the contributor is retired or not employed, the residential address of the contributor shall be disclosed. When the contributor is an entity other than an individual, the name and address of the contributor, the business or activities conducted by the contributor, and the owner(s) and managers of the contributor. The amount of each ~~contribution~~ Contribution and the cumulative value of all ~~contribution~~ Contribution contributed by the contributor. ~~Measure-Finance-Political Advocacy~~ Political Advocacy Committees that support or oppose more than one ~~candidate~~ Candidate or measure Ballot Question shall specify in separate sections in each disclosure statement the ~~candidate~~ Candidate or measure Ballot Question to which each ~~contribution~~ Contribution and ~~expenditure~~ Expenditure applies. In the event a ~~contribution~~ Contribution or ~~expenditure~~ Expenditure applies to more than one ~~candidate~~ Candidate or measure Ballot Question, the pro rata share of such ~~contribution~~ Contribution or ~~expenditure~~ Expenditure shall be clearly identified for each ~~candidate~~ Candidate or measure Ballot Question.

C. All ~~expenditure~~ Expenditure made on behalf of the campaign, including any reimbursements and the nature thereof, and the name and address of the person or ~~business~~ entity to which payment was made.

D. A person seeking to qualify to be on the ballot for the office of Mayor or ~~Councillor~~ Councilor shall include any person who has obtained a nominating petition form approved by the City Clerk. The City Clerk shall issue an approved nominating petition only to the person seeking to be on the ballot or that person's campaign treasurer. Such approved nominating petition forms shall state the name of the person and the city office for which such person is petitioning to qualify

to be on the ballot. People who have sought to be on the ballot as described above, but who do not qualify for the ballot or do not file a declaration of candidacy, are required to file as provided in this section on the Friday of the twelfth week preceding the election, and to file a final report on or before the Friday of the fourth week preceding the election.

E. Within 48 hours of the receipt of a statement listing campaign contributors, or as soon thereafter as reasonably possible, the Purchasing Office shall determine if any contributor has business dealings with the city. For the purposes of this section, a person is deemed to have business dealings if the person, or in the case of an individual, the contributor's principal business or the contributor's employer, has received \$20,000 or more pursuant to a contract (e.g., purchase order, engagement letter, legal agreement, etc.) with the city in the 24 months prior to the date of ~~contribution~~ Contribution. The Purchasing Office shall immediately notify the City Clerk of any ~~campaign~~ contributors who have such business dealings with the city and the City Clerk shall post that information (including: ~~contribution~~ Contribution amount, recipient, and business relationship) on the city's website.

F. The Purchasing Office shall maintain a list of all contributors to the campaign of any elected Mayor or ~~Councillor~~ Councilor and, for a period of one and one-half years following the election of that Official, shall notify the City Clerk of any ~~campaign~~ contributors who that form business dealings with the city, as defined in the preceding paragraph, and the City Clerk shall post that information (including: ~~contribution~~ Contribution amount, recipient, and business relationship) on the city's website.

G. In addition to other campaign disclosure requirements of the Election Code, a candidate Candidate shall designate in his or her disclosure reports those contributors who have contracts pursuant to which they receive funds from the employer of the candidate Candidate, if the candidate Candidate was solely or partially responsible for the recommendation, ~~or award,~~ administration, management, or performance of any part of the contract ~~or for the administration of the contract~~. The City Clerk shall post this designation separately from the other contribution Contributions on the city's website.

2. ~~The statements required by this subsection shall be filed as follows~~ Except as specified in sections B, C, and D below, each statement required by this section shall be filed with the Board no later than noon on the specified day.

A. No Person shall intentionally delay making or re-orting a Contribution or Expenditure with the purpose of avoiding a required report of any Contribution or Expenditure. Required statements are due as follows:

- 1) the first statement on the Friday of the twelfth week preceding the election;
- 2) the second statement on the Friday of the eighth week preceding the election;
- 3) the third statement on the Friday of the fourth week preceding the election;
- 4) the fourth statement on the Friday of the second week preceding the election;
- 5) the fifth statement on the Friday immediately preceding the election;
- 6) the sixth statement on the Monday immediately preceding the election,;

- 7) the seventh statement on the seventh day following the election;**
and
- 8) the eighth and final statement not earlier than the seventh day nor later than the forty-fifth day after the election.**

B. In the case of Candidates involved in a runoff election, the seventh and eighth statements shall not be filed, but additional statements shall be filed on:

- 1) the Friday of the fourth week preceding the run-off election,**
2) the Friday of the second week preceding the run-off election,
3) the Friday preceding the runoff election,
4) the Monday preceding the runoff election,
5) the seventh day following the runoff election, and
6) a final statement not earlier than the seventh day nor later than the forty-fifth day after the runoff election.

C. In addition, any expenditure Expenditure incurred or ~~contribution~~ Contribution made received after 5:00 P.M. on the Tuesday preceding a regular election, special election, or runoff election that is for over \$250 or more for City Council candidate Candidates, or for over \$500 or more for mayoral candidate Candidates shall be reported due no later than 5:00 P.M. the following day, and no later than 5:00 P.M. each succeeding day for the previous day, for each day up to and including the day before the election that such Expenditures are incurred or Contributions received. ~~Each statement shall be filed with the Board no later than noon on the specified day. No person shall intentionally delay making or reporting a contribution or expenditure with the purpose of avoiding a timely report of the contribution or expenditure.~~

3D. Exception to First Filing by Measure Finance Political Advocacy Committee. Inasmuch as this subsection requires that the first

statement be filed not later than on the Friday of the twelfth week preceding the election, and a ~~Measure Finance~~ Political Advocacy Committee might in fact come into existence after such date, in these instances the ~~Measure Finance~~ Political Advocacy Committee will be excused from filing its first statement on the date specified by this Election Code but will ~~act~~ report as follows: A ~~Measure Finance~~ Political Advocacy Committee formed between the twelfth week preceding the election and the Friday four weeks preceding the election shall file its first statement as soon as possible after the Political Advocacy Committee has been formed, but not later than five days after it has complied with the requirements of Section 6 of this Election Code. ~~Measure Finance~~ Political Advocacy Committees shall otherwise comply in all respects with the requirements of this Election Code. A ~~Measure Finance~~ Political Advocacy Committee formed after the Friday ~~four weeks~~ of the fourth week preceding the election shall file its first statement at the time it registers with the City Clerk, notwithstanding any other time allowed for filing in this Election Code, and shall file all subsequent statements at the times required in Section 4(c) of this Election Code.

~~(d) Limits to Campaign Financing. No candidate shall allow or accept contributions or make expenditures in excess of the following for any election:~~

~~1. To a candidate for the office of Councillor, contributions or expenditures equal to twice the amount of the annual salary paid by the City of Albuquerque to Councillors as of the date of filing of the Declaration of Candidacy.~~

~~2. To a candidate for the office of Mayor, contributions or expenditures equal to twice the amount of the annual salary paid by the~~

~~City of Albuquerque to the Mayor as of the date of filing of the Declaration of Candidacy.~~

~~(e)~~ (d) **Limits to Contributions.** No ~~candidate~~ Candidate shall, for any one election, allow total ~~contributions~~ Contributions from any one ~~person~~ Person, with the exception of ~~contributions~~ Contributions from the ~~candidate~~ Candidate himself or herself, of more than 5% of the annual salary for such office at the time of filing the Declaration of Candidacy.

~~(f)~~ (e) **Ban on Contributions from Business Entities and City Contractors.** No ~~candidate shall accept a contribution in support of the candidate's campaign from any corporation, limited liability company, firm, partnership, joint stock company or similar business entity or any agent making a contribution on behalf of such a business entity.~~ No ~~candidate~~ Candidate shall accept a ~~contribution~~ Contribution in support of the ~~candidate~~ Candidate's campaign from any ~~person~~ Person, other than a City employee, who at the time of the ~~contribution~~ Contribution is in a contractual relationship with the City to provide goods or services to the City. The remedy for an unknowing or inadvertent violation of this subsection shall be the return of the ~~contribution~~ Contribution.

~~(g)~~ (f) **Unexpended Contributions.** Any ~~contributions~~ Contributions not expended on the campaign shall be disposed of, at the option of the ~~candidate~~ Candidate or chairperson of a ~~Measure Finance~~ Political Advocacy Committee, by one of the following methods:

1. Retained in the campaign or ~~Measure Finance~~ Political Advocacy Committee banking checking account for a possible runoff election for that office,

2. Returned to the person Person who made the ~~contribution~~ Contribution,

3. Placed in the City's General Fund, or

4. Given to a charity identified by the ~~candidate~~ Candidate.

The ~~eighth and~~ final campaign financing statement shall reflect the final disposition of such ~~contributions~~ Contributions.

~~(h)~~ (g) Anonymous Contributions.

1. All anonymous ~~contributions~~ Contributions shall be disposed of by a ~~candidate~~ Candidate or the chairperson of a ~~Measure Finance Political Advocacy~~ Committee either by placing the ~~contribution~~ Contribution in the City's General Fund or by giving the ~~contribution~~ Contribution to a charity of the Candidate's choice.

2. An anonymous ~~contribution~~ Contribution shall not be considered to be a ~~contribution~~ Contribution to or expenditure ~~Expenditure~~ of the campaign; however, a record of all anonymous ~~contributions~~ Contributions shall be kept by the ~~candidate~~ Candidate or the ~~candidate~~ Candidate's treasurer, or by the chairperson or treasurer of the ~~Measure Finance Political Advocacy~~ Committee and the receipt and disposition of every anonymous ~~contribution~~ Contribution shall be reported to the Board, in writing, at the time the campaign financing disclosure statements required by subsection (c) of this section are filed. Such ~~report~~ report must disclose the goods, services, ~~moneys~~ monies, or other ~~contributions~~ Contributions received, its value, the date of receipt, and the date and method of disposition.

~~(i) For the purposes of this section, contributions and expenditures include those contributions received and expenditures made by or on behalf of an individual at any time prior to the individual filing a Declaration of Candidacy for the office of Mayor or Councillor through the time the final campaign financing disclosure statement is due, or by or on behalf of a Measure Finance Committee at any time prior to the relevant election through the time the final campaign financing disclosure statement is due.~~

~~(j)~~ **(h) Campaign Finance Records.**

1. All campaign finance records and statements shall be open to inspection and/or audit by the Board, its attorney, its designated representative, or its auditor; upon the Board's request, statements shall be presented to ~~the Board~~ it for inspection or audit, or both. The City Clerk shall create an electronic data base for all campaign reporting required in this Election Code and place that information on the City's web site.

2. Campaign Financial Records.

A. Each candidate Candidate or the candidate Candidate's treasurer and each chairperson or treasurer of a ~~Measure Finance~~ Political Advocacy Committee shall keep financial records of the campaign for a period of one year following the date of election, to assure their availability in the event of complaint or inquiry by the Board. Such campaign financial records shall include records of all ~~contributions~~ Contributions, regardless of amount, ~~expenditures~~ Expenditures, cancelled checks, invoices, receipts, bank statements, bills of sales, statements of accounts, leases, rental agreements, and all other financial records pertinent to the campaign.

B. In preparing and maintaining financial records, ledgers, journals, or otherwise, and in recording ~~contributions~~ Contributions and ~~expenditures~~ Expenditures on the statements required by subsection (c) of this section, each ~~candidate~~ Candidate or the ~~candidate~~ Candidate's treasurer and each chairperson or treasurer of a ~~Measure-Finance~~ Political Advocacy Committee shall:

1) Record in-kind ~~contributions~~ Contributions as both ~~contributions~~ Contributions and ~~expenditures~~ equal to the fair market value of the goods or services received.

2) Record campaign loans as ~~contribution~~ Contributions, with subsequent repayment of loans credited against ~~contribution~~ Contributions as Expenditures.

3) Record returned ~~contributions~~ Contributions as credits against ~~contributions~~ Contributions.

4) Record names of contributors on the bank deposit slips.

3. During the period between noon on the Friday immediately preceding the election and the day of the election, each ~~candidate~~ Candidate or the ~~candidate~~ Candidate's treasurer, and the chairperson or treasurer of each ~~Measure-Finance~~ Political Advocacy Committee, shall appear before the Board at a time and place designated by the Board. The appearance of the ~~candidate~~ Candidate's treasurer or the Committee's treasurer before the Board on the ~~candidate~~ Candidate's or Committee's behalf does not relieve the ~~candidate~~ Candidate or the Committee's chairperson of the ultimate and complete responsibility for the accuracy of all reports filed and the control of the ~~candidate~~

Candidate's or Political Advocacy Committee's campaign. Upon request of the Board, and At the a designated time and place, the campaign financial records of each ~~candidate~~ Candidate and each ~~Measure Finance~~ Political Advocacy Committee required through the second statement pursuant to Section 4 of this Election Code shall be submitted to the Board for inspection and audit, or both. Each ~~candidate~~ Candidate and the chairperson of each ~~Measure Finance~~ Political Advocacy Committee shall be given at least three days written notice of the designated time and place.

~~(k) Fund-Raising Activity.~~

~~1. The gross receipts of a fund-raising activity on behalf of a candidate are considered to be campaign contributions, and all expenditures associated with such a fund-raising activity are considered to be campaign expenditures. As used in this subsection, the term "gross receipts" includes all monies and donations of any kind which are received as part of the fund-raising activity.~~

~~2. The host of a fund-raising activity on behalf of a candidate or Committee shall be responsible for reporting the contributions resulting from the activity unless contributors are identified in the required manner on the Disclosure of Campaign Financing Statement, and the limits to contributions specified in subsection (e) of this Section 4 shall apply as if the total contributions at the fund-raising activity, not otherwise reported, were made by the host.~~

~~(l) (i) Political Advocacy Committee Measure Campaign Financing. Any person Person or group which has contributed in excess of thirty percent of the Mayor's salary to support or oppose a measure a ~~Measure Finance~~ Political Advocacy Committee shall have the name of~~

such ~~person~~ Person or group inserted into the name of the ~~Measure Campaign Finance~~ Political Advocacy Committee to which the funds were contributed or shall create a new committee with the name of the contributor in the committee name. It is the obligation of the ~~Measure Finance~~ Political Advocacy Committee to immediately inform the Board of the Political Advocacy Committee's required name change; the Political Advocacy Committee shall simultaneously report the amount of the ~~contribution~~ Contribution which triggers the name change. For the purposes of this subsection, "Mayor's salary" means the salary paid by the City of Albuquerque as of the date of the ~~contribution~~ Contribution ; ~~support or oppose a measure covers qualification for the ballot plus voter approval or disapproval of a given measure.~~

~~Section 4.~~ Section 5. Campaign Materials Disclaimers.

(a) Each ~~candidate~~ Candidate and each chairperson of each ~~Measure Finance~~ Political Advocacy Committee shall ensure that all campaign materials ~~specify~~ disclose the name of the ~~sponsor~~ candidate Candidate or ~~Measure Finance~~ Political Advocacy Committee ~~who~~ that authorized the printing or distribution of such material and the name and address of the establishment that printed or otherwise created the campaign materials ; ~~provided, that the name and address of the printing establishment is not required to be specified in a newspaper advertisement.~~ Each ~~candidate~~ Candidate and each chairperson of each ~~Measure Finance~~ Political Advocacy Committee shall also ensure that a copy of each, script, recording, or photograph, or an accurate full description of the campaign material used in the campaign is promptly filed with the Board promptly following its issuance or distribution upon such material being printed or distributed.

**~~Section 5~~ Section 6. Measure Finance Political Advocacy
Committees.**

(a) Each ~~Measure Finance~~ Political Advocacy Committee shall register with the City Clerk within five days of formation by preparing and filing with the Board a statement, signed by the chairperson of the Committee, setting forth:

- 1. The exact name of the Committee;**
- 2. The official address and phone number of the Committee; and**
- 3. The names of ~~officials~~ the chairperson or director and treasurer of the Committee.**

(b) When knowledge is received of the formation and existence of any ~~Measure Finance~~ Political Advocacy Committee, the Board shall furnish to the chairman, ~~moderator,~~ or head (however designated and the treasurer, if different); ~~herein referred to as the "chairperson"~~ of such committee, and also the fund-raising member thereof (however designated), if known, a copy of this Election Code and the Rules and Regulations of the Board, and call attention to the requirements for reporting ~~contributions~~ Contributions and ~~expenditures~~ Expenditures by the ~~Measure Finance~~ Political Advocacy Committee as provided for in this Election Code. Within five days from receipt of said notification from the Board, the ~~Measure Finance~~ Political Advocacy Committee shall prepare and file with the Board a statement, signed by the chairperson of the Committee, setting forth:

- 1. The exact name of the Committee;**

2. The official address and phone number of the Committee;

3. The names of the ~~officials~~ Chairperson or director, and treasurer of the Committee; and

4. Acknowledgement of receipt of a copy of this Election Code and the Board's Rules and Regulations and of the requirements regarding filing of reports.

(c) It is recognized that an affirmative duty rests on the officials of any such ~~Measure Finance~~ Political Advocacy Committee to be aware knowledgeable of the provisions of this Election Code, and nothing contained in this Section shall exempt a ~~Measure Finance~~ Political Advocacy Committee from filing its statement of formation or existence as required herein at the earliest possible date. Failure to so file according to the provisions of subsection (a) of this section shall subject the Political Advocacy Committee to a fine not to exceed the maximum amount authorized by state law or public reprimand or both as provided in the Board's Rules and Regulations. Accordingly, such officials are enjoined to prepare and file the statement specified in subsection (a) of this section without such a request from the Board. In instances where such statement is filed spontaneously by the Political Advocacy Committee, and complies with subsection (a) of this section, the Board is excused from providing the notification specified in subsection (b) of this section.

(d) A Measure Finance Committee's registration shall expire each ~~year on December 31st. A Measure Finance Committee shall renew its registration with the City Clerk upon expiration or within five days of any contribution collection or expenditure by the Measure Finance Committee that is in excess of \$250. At the time a Measure Finance~~

~~Committee renews its registration, it shall review the information that is on file with the City Clerk in accordance with subsection (b) of this section and shall revise that information if any changes have occurred since the prior registration~~ when it has filed its final statement pursuant to subsection 4(c)(2) of this Election Code showing the final disposition of all campaign funds in accordance with subsection 4(f) of this Election Code.

~~Section 6.~~ Section 7. Familiarity with Election Code and Rules and Regulations.

The Board shall have available on request by ~~candidate~~ Candidates and ~~chairpersons~~ Chairpersons of ~~Measure Finance~~ Political Advocacy Committees, copies of the Board's Rules and Regulations and the City Charter of Albuquerque, revised to date, and require that each ~~candidate~~ Candidate filing a Declaration of Candidacy and each chairperson of a ~~Measure Finance~~ Political Advocacy Committee acknowledge in writing receipt of and familiarity with the terms of this Election Code and the Board's Rules and Regulations. Each ~~candidate~~ Candidate and Political Advocacy Committee chairperson shall furnish an address and phone number at which the ~~candidate~~ Candidate or Political Advocacy Committee chairperson can be reached, and to which communications, including notifications of alleged violations or hearings, can be mailed or delivered, and ~~agreeing~~ shall agree that notice certified by the deliverer as left at such address shall be deemed received by the candidate Candidate or chairperson.

~~Section 7.~~ Section 8. Preservation of Records

(a) The records and statements required by this Election Code shall be preserved intact as public records by the Board for a period of at least seven years after the election in question.

(b) All records of the Board in the conduct of its business, including minutes of meetings and recommendations to the City Council and Mayor, shall be preserved intact as permanent public records by the Board.

~~Section 8.~~ Section 9. Rules and Regulations; Assistance; [Campaign and Election Auditor].

(a) The Board shall promulgate reasonable Rules and Regulations for its conduct and in aid of interpretation and enforcement of this Election Code, and amend such Rules and Regulations as it may, from time to time, deem advisable; provided, that amendments to said Rules and Regulations shall not be made by the Board during the ninety days preceding an election. The current Rules and Regulations of the Board shall be made available in published form no later than sixty days prior to any election.

(b) There is hereby created the position of Campaign and Election Auditor. The Auditor shall be either a Certified Public Accountant or a Registered Public Accountant and shall:

1. Be retained by the Board as an independent contractor to serve from the established date of filing of the first Declaration of Candidacy for each election until ninety days following the specified final date set forth for filing of the final statement on disclosure of campaign financing; provided, that the Board in its discretion may retain the

services of the Auditor at other times including elections in which only measures Ballot Questions are to be placed on the ballot.

2. Monitor all disclosure statements and reports to examine the accuracy and compliance by the ~~person~~ individual or entity filing such statements or reports per ~~with~~ the provisions of this Election Code and with any Rules and Regulations promulgated by the Board, and provide such other services as may be required by the Board.

3. At the direction of the Board, be available to assist ~~candidate~~ Candidates, and ~~Measure Finance~~ Political Advocacy Committees and other individuals in connection with this Election Code and with any Rules and Regulations promulgated by the Board, and provide such other services as may be required by the Board.

~~Section 9.~~ Section 10. Enforcement.

(a) Charges of Violations.

1. Any charge or charges that a ~~candidate~~ Candidate or the ~~chairperson of a Measure Finance~~ Political Advocacy Committee or its chairperson or any other ~~group person~~ Person has committed a violation of this Election Code or of the Rules and Regulations promulgated by the Board shall be made in writing, notarized, and brought before the Board.

2. Each charge of any alleged violation shall specify the specific provision alleged to have been violated or a clear and concise statement of why the complainant believes a violation has occurred, and shall include documentation as to time, place, facts, and the names of any witnesses to the alleged violation. No charge shall be accepted unless

the complaint is signed and ~~unless the documentation referred to above,~~ the statement of the provision alleged to have been violated, or the reason for the complaint, is presented at the same time the complaint is filed.

3. Except as provided in subsection (d) of this section, the Board shall give written notice of such charge or charges to ~~the candidate or chairperson~~ the Person charged before taking further action.

(b) The Board, in its discretion, may establish a Complaint Committee to review the complaint for completeness, and the Complaint Committee shall either refer the complaint to the Board or reject the complaint and give written notice to the Board and the complainant of the reasons for the rejection. The complainant may appeal the Complaint Committee's rejection to the full Board.

(c) Upon referral, or any appeal of any non-referred complaint, ~~by~~ to the Board, the Campaign and Election Auditor shall investigate the charge or charges and report to the Board.

(d) Notwithstanding any other provision in this section, the Board may, on its own initiative, initiate a charge or charges [~~that a candidate or the chairperson of a Measure Finance Committee or any other group has committed a~~ of an alleged violation of this Election Code or of the Rules and Regulations promulgated by the Board. In the event that inspection and/or audit of ~~the candidates a candidate~~ Candidate's or ~~Measure Finance Committees~~ Political Advocacy Committee's campaign financial records made pursuant to Section 4(i)3. 4(h)(3) results in a charge or charges against a candidate Candidate or ~~Measure Finance~~ Political Advocacy Committee, written notice to the candidate Candidate

or chairperson of a Political Advocacy Committee of the charge or charges shall not be required before the Board takes further action.

(e) Should the Board find, after due hearing, that a violation of this Election Code or the Rules and Regulations of the Board has occurred, it may, for each violation, issue a written warning, a public reprimand, or impose a fine not to exceed the maximum amount authorized by state law, or do both.

(f) Automatic Fines. Notwithstanding subsection (e) of this section, a failure to file or late filing shall subject the ~~candidate~~ Candidate or the chairperson of the ~~Measure Finance~~ Political Advocacy Committee or any other obligated ~~person~~ Person, whichever may be the case, to an automatic fine and public reprimand according to the schedules established in the Rules and Regulations of the Board. In situations where there is an incomplete filing, the ~~candidate~~ Candidate or the chairperson of the ~~Measure Finance~~ Political Advocacy Committee shall be notified of the failure and shall have ten days from the date of such notice to correct the failure. ~~If the incomplete filing is not corrected within ten days there shall be an automatic fine and public reprimand.~~ If the failure is corrected within ten days and the Board determines from the face of the filings that any failure appears to have been inadvertent and made in good faith, the Board shall find that there has been no violation and shall communicate same in writing to the Candidate or Political Advocacy Committee. If the incomplete filing is not corrected within ten days, there shall be an automatic fine and public reprimand.

(g) In addition to imposing such sanctions, or as an alternative thereto, and if the violator be a successful ~~candidate~~ Candidate in the election, the Board may recommend to the Council that the violator be reprimanded, censured, or removed from office.

(h) The Council may, upon the recommendation of the Board, and after due hearing of the charge(s), accept such recommendation from the Board, order the suspension or removal of an elected official; provided, however, that no official such violator shall be removed or suspended except upon the concurrence of two-thirds of the ~~Councillors~~ Councilors qualified to vote thereon.

(i) An appeal may be taken from any findings and action of the Board pursuant to subsections (e) and (f) of this section and from any order of the Council pursuant to subsection (h) of this Section to the District Court of the Second Judicial District, by filing Notice of Appeal in the said District Court within five days of the date of the action or order appealed from, and by filing with said District Court within thirty days a true transcript and record of the proceedings upon which said action or order is based. The hearing in District Court shall be held on said transcript and record only, and new testimony shall not be taken.

(j) All fines not timely paid shall be assessed interest at the maximum rate allowed by state law commencing on the thirty-first day following the date that the fine was imposed.

(k) Any fines collected under this section shall be placed into the ~~City's General Fund~~ Open and Ethical Elections Fund established by Article XVI of this Charter.

~~Section 10.~~ Section 11. Non-waiver of Penalties.

Nothing herein set forth shall be construed to affect or otherwise diminish any penalties otherwise provided by law for violation of this Election Code or the Rules and Regulations promulgated by the Board,

nor shall ~~prevent the Board~~ be prevented from bringing to the attention of ~~the a~~ proper authority any alleged violation coming to its attention which may be subject to other penalties.

~~Section 11.~~ Section 12. Amendments.

This Election Code may be amended without requiring compliance with Article VI of this Charter by ordinance adopted by a majority plus two of the entire membership of the Council voting in favor of such amendment or amendments, and said ordinance being otherwise governed by Article XI of this Charter.

~~Section 12.~~ Section 13. Representative Inspections.

(a) Certification of Representatives. All declared and certified ~~candidate~~ Candidates for municipal office, ~~measure finance committee~~ Political Advocacy Committee, or committee or organization dedicated to turning out the voters on election day shall be entitled to designate representatives who may enter polling places for the purpose of observing voter signature rosters and observing the voting process. Each ~~candidate~~ Candidate, ~~measure finance committee~~ Political Advocacy Committee, or committee or organization dedicated to turning out voters on election day shall request from the City Clerk the number of representative authorization passes that are ~~wished~~ intended for use on election day. The deadline to request representative authorization passes is 3:00 p.m. on the day prior to election day. The authorization passes shall designate the name of the ~~candidate~~ Candidate, ~~measure finance committee~~ Political Advocacy Committee, or committee or organization dedicated to turning out voters on election day and may be used at any polling place on election day. The authorization passes may be used by those people designated by the ~~candidate~~ Candidate,

~~measure finance committee~~ Political Advocacy Committee, or committee or organization dedicated to turning out voters on election day. The names of the representatives of the Candidates', Political Advocacy Committees, or committees or organizations dedicated to turning out voters on election day representatives' names need not appear on the authorization pass.

(b) **Access to Signature Rosters.** Candidates, Political Advocacy Committees and/or committees or organizations dedicated to turning out voters on election day ~~organization~~ representatives who have received an authorization pass may enter the polling places to observe the voter signature rosters and to observe the election process during the hours the polling place remains open to voters. Those representatives may observe the voter signature rosters at times and in a place and manner that the presiding election judge determines shall not interfere with the orderly and timely process of voting. Only members of the precinct board shall handle the signature rosters. The precinct election judges shall facilitate the representatives in observing each page of the voter roster. Representatives present in polling places to observe the conduct of the voting process shall not interfere with the orderly and timely process of voting. No more than one representative for a particular ~~candidate~~ Candidate, Political Advocacy Committee, or committee or organization dedicated to turning out voters on election day ~~committee or organization~~ shall be present at a polling place at a time. Should representatives for more than one ~~candidate~~ Candidate, Political Advocacy Committee, or committee or organization dedicated to turning out voters on election day ~~committee or organization~~ wish to observe the voter signature roster at the same time, the presiding election judge shall determine the manner in which such observation shall take place.

(c) Orderly Conduct. In the event a ~~candidate~~ Candidate or representative of a Candidate, or representatives of Political Advocacy Committees or committees or organizations dedicated to turning out voters on election day ~~committee or organization~~ representative is disorderly or fails to obey the instructions of a precinct election judge, the representative(s) shall surrender his their authorization pass(es) and shall no longer be entitled to be present at the polling place as a representative.

~~Section 13.~~ Section 14. [Photo Voter Identification Required].

When a voter approaches the election polling place seeking to vote, the voter must identify himself or herself audibly by name. The Municipal Election Clerk shall locate in the election rolls the name spoken and ask the individual seeking to vote for one current valid identification card containing the voter's name and photograph. Such photo identification card may include any card issued by a government agency, driver's license, student identification card, commercial transaction card such as a credit or debit card, insurance card, union card, a professional association card or the voter identification card issued by the City Clerk. If the individual is unable to provide a photo identification card, he or she shall be allowed to vote on a provisional ballot, but only if he or she swears or affirms under penalty of perjury in an affidavit provided by the City Clerk that he or she is the registered voter listed on the voter registration rolls at the precinct at which he or she presented himself or herself to vote and provides his or her date of birth and the last four digits of his or her social security number. Provisional ballots shall be issued for no other reason than the failure to present photo identification. Provisional ballots shall be counted only by the Municipal Canvassing Board and only upon the voter's presentation to the City Clerk within the ten day canvassing period one

of the photo identification cards described in this section. The Municipal Canvassing Board shall also verify that the voter who cast the provisional ballot was registered to vote for the election and did not vote elsewhere in the same election. If a voter who cast a provisional ballot under this section swears or affirms under penalty of perjury in an affidavit provided by the City Clerk within the ten day canvassing period that he or she has a religious objection to being photographed, such voter shall not be required to submit photo identification. The Municipal Canvassing Board shall otherwise verify that the provisional ballot was valid. The City Clerk shall develop and provide instructions for elections judges concerning the requirements of this Section and a method of complaint and resolution for individuals who feel they have been discriminated against by election officials' or the City Clerk's administration of this Section, in accordance with federal intimidation guidelines. Knowingly executing a false statement constitutes perjury as provided in Section 30-25-1 NMSA 1978 and voting on the basis of a falsely executed statement constitutes false voting as provided in Section 1-20-8 NMSA 1978. Voter photo identification cards shall be issued by the City Clerk without charge to any voter who presents any two of the following identification documents that show the name and address of the voter: a state issued identification card, social security card, student identification card, library card, insurance card, selective service card, union card, professional association card, utility bill, bank statement, government check or a paycheck. If the individual is unable to present any two of these documents to the City Clerk, then the voter shall swear or affirm in writing under penalty of perjury that he or she is the registered voter and shall be issued a voter photo identification card upon confirmation with the County Clerk that such person is presently registered to vote. The City Clerk issued voter photo identification card shall state on its face that it shall not be valid for identification other than for the purpose of voting in City Elections and shall not be valid if

the voter is subsequently purged from the voter rolls. The Municipal Canvassing Board shall certify the results of the Municipal Election by the end of the tenth day after the day on which the election is held. Pursuant to Article II, Section 2 (b) of the City Charter, this Section shall take precedence over the State Municipal Election Code. The provisions of this Section shall apply only to City of Albuquerque Municipal Elections. The provisions of this Section shall not apply to City of Albuquerque Municipal Elections conducted concurrently with any statewide special, general or primary election pursuant to Section 3-8-9 NMSA 1978.

~~Section 14.~~ Section 15. Early Voting.

(a) An Early Voter may, until the Friday immediately before the date of the election, vote in person on a voting machine beginning on the twentieth day before the election in the office of the City Clerk and any other alternate early voting location as established in an election resolution ~~until the Friday immediately before the date of the election.~~

(b) Early voting locations shall have hours of operation as designated in the election resolution, but shall not open prior to 7:00 a.m. and shall not remain open after 8:00 p.m.

(c) The City Clerk shall:

1. Ensure Early Voters have adequate access throughout the City of Albuquerque to early voting locations ~~throughout the City of Albuquerque,~~ which that meet the same criteria as a polling place open on election day;

2. Assure the security of the voting machines in the early voting locations;

3. Ensure that Early Voters have not been issued an absentee ballot at the time the voter presents himself at an early voting location;

4. Ensure that Early Voters cannot vote on election day or be issued an absentee ballot after early voting; and

5. In addition to any other publication requirement, publish the early voting locations on the City's website.

(d) The City Clerk shall appoint a precinct board to each early voting location, ~~who~~ that under the supervision of the City Clerk shall manage daily operations at the early voting locations.

1. The precinct board shall include at least one presiding judge who, in the presence of at least one other member of the precinct board or City Clerk staff, shall enter the early voting location on days when voting takes place ~~in the presence of at least one other member of the precinct board or City Clerk staff prior to opening the polls.~~

2. Upon entering the early voting location, the presiding judge, along with at least one other member of the precinct board, shall verify the number of ballots tallied on each voting machine.

3. Upon the daily closing of polls and after every issued ballot has been placed in the voting machine, the presiding judge shall secure the alternate voting location and verify the number of ballots tallied on each voting machine.

4. The presiding judge and witnessing precinct board member(s) shall record the number of ballots tallied on the daily voting report which shall contain:

- i. The voting machine serial number;
- ii. The beginning and ending public counter number for the day;
- iii. The total number of voters for the day; and
- iv. A place for the signature of the presiding judge and a precinct board member.

5. The presiding judge shall immediately notify the City Clerk of any discrepancy in the daily voting report and shall not use the voting machine showing a discrepancy until such time as the City Clerk authorizes its use.

6. No member of the precinct board or any other person may enter the early voting location prior to its official opening or ~~after securing the location~~ its official closing ~~at the end of the voting day or prior to entering the location for opening~~ unless under the supervision or with the express permission of the City Clerk.”

SECTION 2. TIME OF FILING WITH THE CITY CLERK. The Director of City Council Services, or designee, shall file the proposed amendment described in Section 1 above with the City Clerk within the ninety days immediately preceding the October 6, 2015 City of Albuquerque municipal election.

SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this proposition is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of

the remaining provisions of this proposition. The Council hereby declares that it would have passed this proposition and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 4. EFFECTIVE DATE. This proposition is effective immediately. The Charter Amendment described in Section 1 of this proposition shall take effect immediately following the certification of the election if approved by the voters.

**CITY of ALBUQUERQUE
TWENTY-FIRST COUNCIL**

COUNCIL BILL NO. P-15-12 ENACTMENT NO. _____

SPONSORED BY: DON HARRIS

CHARTER AMENDMENT PROPOSAL

ADOPTING A PROPOSITION TO BE SUBMITTED TO THE VOTERS AT THE OCTOBER 6, 2015 CITY OF ALBUQUERQUE MUNICIPAL ELECTION THAT AMENDS ARTICLE XVI OF THE CHARTER OF THE CITY OF ALBUQUERQUE CONCERNING OPEN AND ETHICAL ELECTIONS.

WHEREAS, The 2015 Charter Review Task Force was established to review the Charter of the City of Albuquerque and make recommendations relating to various provisions; and

WHEREAS, The 2015 Charter Review Task Force has held nine (9) meeting since April 30, 2015 that have been open to the public, including one public hearing; and

WHEREAS, The Task Force considered recent court rulings that relate to Open and Ethical Elections; and

WHEREAS, Article XVI of the City Charter is cited as the “Open and Ethical Elections Code”.

BE IT PROPOSED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. The City Clerk shall place the complete text of the below summary, title and proposition on the ballot at the October 6, 2015 City of Albuquerque municipal election and the City of Albuquerque qualified voters shall be permitted to vote “for” or “against” the proposition:

SUMMARY

Proposing amendments be made to Article XVI. Open and Ethical Elections Code to include:

TITLE & PROPOSITION

PROPOSING TO AMEND ARTICLE XVI OF THE ALBUQUERQUE CITY CHARTER CONCERNING OPEN AND ETHICAL ELECTIONS:

“Section 1. Title.

Section 1 through 21 of This article may be cited as the “Open and Ethical Elections Code”.

Section 2. Legislative Intent.

The intent of the Open and Ethical Elections Code is to:

(A) Avoid both actual undue influence of large campaign donors and the appearance of undue influence in Council and Mayoral elections and decision-making;

(B) Diminish the public perception of corruption and strengthen public confidence in the governmental and election process;

~~**(C) Provide well-qualified candidates with adequate funding to mount campaigns to encourage competitive Council and Mayoral elections so that the City’s residents have more choices about the leadership and direction of the City.**~~

~~**(D) (C) Increase the accountability of elected officials to their constituents who elect them, as opposed to the contributors who fund their campaigns; and**~~

~~**(E) (D) Ensure that the City’s Council and Mayoral election process is fair, responsible and ethical.**~~

Section 3. Definitions.

As used in the Open and Ethical Elections Code:

(A) “Applicant Candidate”. A candidate Candidate, but not a write-in candidate, running for a Covered Office and who is seeking to be a Participating Candidate.

(B) “Candidate”. Any individual who has (1) obtained a nominating petition from the City Clerk pursuant to Section 4 (C) 1.

D. of the Election Code for the office of Mayor or City Councilor, (2) filed an affidavit on a form approved by the City Clerk, stating that he or she is a candidate for Mayor or City Councilor, (3) filed as a candidate for elected office as required by law, (4) publicly announced his or her candidacy for Mayor or City Council, or (5) has accepted a financial or in-kind contribution or contributions that exceed a grand total value of \$250, or made expenditures that exceed a grand total of \$250, in support of his or her election to the office of Mayor or City Councilor, whichever first occurs.

(B)(C) “Clerk”. The City Clerk.

(C)(D) “Contested Election”. A regular municipal election in which there is more than one candidate for a City Council or Mayor position.

(E) “Contribution”

(1) A payment, gift, or loan of money or any thing of value, including any in-kind services or tangible items or the use thereof:

(a) Given to a Candidate or the candidate’s campaign for the purpose of supporting in any way the election of a candidate for a covered office; or

(b) Not given to a candidate or the candidate’s campaign but expended or employed by any other person in cooperation, consultation, or concert with , or at the express or implied, direct or indirect, request or suggestion of, a candidate or the candidate’s campaign to support the election or defeat of a candidate for a covered office.

(2) Contributions of services or tangible items, including the use thereof, shall be attributed a cash value equal to their fair market value.

(3) Notwithstanding the foregoing, none of the following shall be considered a contribution: a candidate’s own services and property, other than cash contributed or loaned; the personal, non-

professional services of any volunteer for any campaign purpose(s)
or the expenses incurred by any volunteer in performing such
services; the use of a dwelling unit or residential premises
incidental thereto, including the provision of refreshments and
attendant resources or supplies in connection with such use; and
the use of vehicles for any campaign purpose.

~~(D)(F)~~ “Covered Office”. City Council or Mayor.

~~(E) ELECTIONEERING COMMUNICATIONS. Any communication~~
~~broadcasted by television or radio, printed in a newspaper or on a~~
~~billboard, directly mailed or delivered by hand to personal~~
~~residences or otherwise distributed that:~~

~~(1) unambiguously refers to any candidate; and~~

~~(2) is broadcasted, printed, mailed, delivered or distributed~~
~~within thirty days before a regular municipal election; and~~

~~(3) is broadcasted to, printed in a newspaper distributed to,~~
~~mailed to, delivered by hand to or otherwise distributed to an~~
~~audience that includes members of the electorate for a Covered~~
~~Office.~~

~~(4) ELECTIONEERING COMMUNICATION does not include:~~

~~(a) any news articles, editorial endorsements,~~
~~opinion or commentary, writings or letters to the editor printed in a~~
~~newspaper, magazine or other periodical not owned or controlled by~~
~~a candidate or political party;~~

~~(b) any editorial endorsements or opinions aired by a~~
~~broadcast facility not owned or controlled by a candidate or political~~
~~party;~~

~~(c) any communication by Persons made in the~~
~~regular course and scope of their business or any communication~~
~~made by a membership organization solely to members of such~~
~~organization and their families; or~~

~~(d) paid for by a candidate or candidate's campaign committee.~~

~~(F) (G) "Expenditure". The payment or furnishing of money or anything of value, or the incurring or repayment of indebtedness or obligation to any Person, by or on behalf of any Person, candidate or political committee in consideration for any services, supplies, equipment, or other thing of value performed or furnished for any reason, including support of or opposition to a candidate, political committee or measure for or for reducing the debt of a Participating Candidate for nomination or election to a Covered Office. the purpose of supporting a candidate's election to a Covered Office.~~

~~(G) EXPLORATORY PERIOD.~~

~~(1) For Mayoral candidates, from January 1 through February 15; and~~

~~(2) For Council candidates, from March 15 through April 30.~~

~~(H) EXPRESS ADVOCACY. An Expenditure made by a Person or group, other than a candidate or a candidate's committee, that advocates the election or defeat of a candidate, including all costs of designing, producing or disseminating a communication that contains phrases such as "vote for", "re-elect", "support", "cast your ballot for", "[name of candidate] for [name of office]", "[name of candidate] in [year]", "vote against", "defeat", "reject" or similar phrases.~~

~~(I) (H) "Fund". The Open and Ethical Elections Fund.~~

~~(J) (I) INDEPENDENT EXPENDITURE. Any funds spent on Express Advocacy or Electioneering Communications that are not coordinated with any candidate's campaign. The Clerk shall adopt regulations to determine whether funds spent on Express Advocacy or Electioneering Communications are coordinated Expenditures.~~

Coordinated Expenditures on Express Advocacy or Electioneering Communications are treated as contributions.

~~(K) IN-KIND CONTRIBUTION. A good or service, other than money, having monetary value not to exceed more than 5% of the annual salary for such office at the time of filing the Declaration of Candidacy, but not including an individual who volunteers his own personal service.~~

~~(L) NONPARTICIPATING CANDIDATE. A candidate running for a Covered Office who does not choose to participate in the Open and Ethical Elections Code or a candidate running for a Covered Office who declares an intent to participate in the Open and Ethical Elections Code, but who fails to become a Participating Candidate.~~

~~(M) OPPOSING FUNDS. Funds spent opposing a Participating Candidate. The amount of Opposing Funds is calculated by determining the opponent of the Participating Candidate who has the highest total of Expenditures and supportive Independent Expenditures; the amount of Opposing Funds is calculated by totaling the Expenditures made by that opponent, the amount spent on Independent Expenditures in support of that opponent and the amount spent on Independent Expenditures in opposition to the Participating Candidate. No Independent Expenditure may be counted as both opposing a Participating Candidate and in support of that candidate's opponent.~~

~~(N) (J) "Participating Candidate". A candidate Candidate for seeking election to a Covered Office who chooses to obtain financing pursuant to the Open and Ethical Elections Code and who is certified to participate as an Open and Ethical Elections Code Candidate.~~

~~(O) (K) "Person". Any individual, including the Candidate, cooperative association, club, corporation, company, firm,~~

partnership, joint venture syndicate, profit or nonprofit organization, or any other entity.

~~(1) a City resident;~~

~~(2) a labor organization, club, association or organization who have members who are City residents; or~~

~~(3) a corporation, limited liability company, firm, partnership, joint stock company, or other entity conducting business in the City.~~

(L) "Qualified Contribution". A money contribution which, when added to all other money contributions from the same contributor to the same Candidate in the same election, does not exceed one hundred dollars (\$100.00).

~~(P) QUALIFYING CONTRIBUTION. A donation of \$5.00 in the form of cash, check, debit card, credit card or money order payable to the Fund in support of an Applicant Candidate that:~~

~~(1) for the Mayoral race is made by a registered City voter and for a Council race is made by a registered City voter residing in the district in which the Applicant Candidate desires to represent;~~

~~(2) is made during the designated Qualifying Period and obtained through efforts made with the knowledge and approval of the Applicant Candidate;~~

~~(3) is acknowledged by a receipt that identifies the contributor's name and residential address on forms provided by the Clerk and that is signed by the contributor, one copy of which is attached to the list of contributors and sent to the City Clerk; and~~

~~(4) identifies which Applicant Candidate the City resident supports.~~

~~(Q) QUALIFYING PERIOD.~~

~~(1) For Mayoral candidates, from February 16 through March 31; and~~

~~(2) For Council candidates, from May 1 through May 31.~~

~~(R) SEED MONEY. A contribution in support of an Applicant Candidate of no more than \$100 per Person, except for the Applicant Candidate who can contribute up to \$500.00, raised for the primary purpose of enabling Applicant Candidates to collect Qualifying Contributions and petition signatures the aggregate amount of which may not exceed 10% of the applicable spending limit.~~

~~Section 4. Terms of Participation – Declaration of Intent.~~

~~(A) An Applicant Candidate, choosing to obtain financing pursuant to the Open and Ethical Elections Code, shall file a declaration of intent with the Clerk to participate as an Applicant Candidate for a Covered Office. The declaration of intent shall be filed with the Clerk prior to or during the Qualifying Period according to forms and procedures developed by the Clerk.~~

~~(B) An Applicant Candidate shall submit a declaration of intent prior to collecting any Qualifying Contributions and make explicit in the declaration of intent that the Applicant Candidate has complied with and will continue to comply with the Open and Ethical Code's contribution [and Expenditure] limits and all other requirements set forth in the Open and Ethical Elections Code.~~

~~(C) An Applicant Candidate shall file a detailed contribution and Expenditure report regarding Seed Money and In-Kind Contributions with the Clerk at the time of filing a declaration of intent.~~

~~(D) The declaration of intent shall specify that the Applicant Candidate agrees that any money received from the Fund shall not be used to retire a prior campaign debt from a previous election period.~~

~~Section 5. Qualifying Contributions.~~

~~(A) An Applicant Candidate for Mayor shall obtain Qualifying Contributions from a minimum of 1% of registered City voters.~~

~~(B) An Applicant Candidate for Council shall obtain Qualifying Contributions from a minimum of 1% of the City voters registered in the district that the Applicant Candidate desires to represent.~~

~~(C) No payment, gift or anything of value shall be given in exchange for a Qualifying Contribution.~~

~~Section 6. Section 4. SEED MONEY-IN-KIND QUALIFIED CONTRIBUTIONS.~~

~~(A) An Applicant Candidate or a Participating Candidate may accept Seed Money during the Exploratory Period and Qualifying Period not to exceed \$100 per Person Qualified Contributions starting March 1st of the election year and ending the fifth Tuesday following the municipal election.~~

~~(B) An Applicant Candidate may contribute up to \$500 from the Applicant Candidate's personal funds for Seed Money.~~

~~(C) Seed Money that exceeds 10% of the applicable distribution to a Participating Candidate shall be deducted from the revenues distributed to the Applicant Candidate from the Fund.~~

~~(D) The aggregate amount of Seed Money received and spent by an Applicant Candidate shall not exceed an amount equal to 10% of the applicable distribution to a Participating Candidate.~~

~~(E) An Applicant Candidate may accept In-Kind Contributions from the beginning of the Exploratory Period up to the regular municipal election. The value of any In-Kind Contribution shall not count against the applicable limit on Seed Money contributions. The aggregate amount of In-Kind Contributions received by an Applicant Candidate shall not exceed an amount equal to 10% of the applicable spending limit.~~

~~(F) Volunteer work hours are non-reportable and shall not count as In-Kind Contributions or against the applicable limit on Seed Money. An individual may volunteer personal services to an Applicant Candidate as long as the volunteer is not compensated. If~~

~~an individual volunteers during working hours, paid by a third-party employer or the Applicant Candidate, then that employer makes an In-Kind Contribution to the Applicant Candidate.~~

~~(G) If a Participating Candidate is defeated or is elected, any unspent Seed Money shall be forfeited to the Fund.~~

(B) Each Qualified Contribution to be counted toward the 1% of voters referred to in Section 5(A)(1)(b) and (c) shall be accompanied by a form signed by the contributor, which shall include space for the contributor's name, residential address, telephone number, and the amount of the contribution, as well as the contributor's occupation and employer where such contribution totals \$25 or more as either a single contribution from that contributor, or, when combined with any previous Qualified Contribution from that contributor, totals \$25 or more.

(C) Each Candidate or his or her campaign committee who receives Qualified Contributions shall file reports of such contributions pursuant to Section 7 of this Article.

(D) No person shall knowingly make, accept, or report a Qualified Contribution in the name of a person who is not the actual contributor or who will be reimbursed or compensated for the contribution by another person.

~~Section 7. Section 5. CERTIFICATION OF PARTICIPATION.~~

~~(A) Upon receipt of a final submittal of Qualifying Contributions by an Applicant Candidate, the Clerk shall determine whether the Applicant Candidate has:~~

~~(1) signed and filed a declaration of intent to obtain fund revenue;~~

~~(2) submitted the appropriate number of Qualifying Contributions;~~

~~(3) qualified as a candidate pursuant to other applicable City and State election law;~~

~~(4) complied with Seed Money contribution and Expenditure restrictions; and~~

~~(5) otherwise met the requirements for obtaining financing pursuant to the Open and Ethical Elections Code.~~

~~(B) The Clerk shall certify Applicant Candidates running for Mayor, complying with the requirements of this section, as Participating Candidates on April 1 after final submittal of Qualifying Contributions. The Clerk shall certify Applicant Candidates running for Council, complying with the requirements of this section, as Participating Candidates on June 1 after final submittal of Qualifying Contributions.~~

~~(C) At the end of the Qualifying Period, an Applicant Candidate shall file Seed Money contribution and Expenditure reports with their application for certification as a Participating Candidate.~~

~~(D) A Participating Candidate shall comply with all requirements of the Open and Ethical Elections Code and applicable City and state election law after certification as a Participating Candidate and throughout the election cycle.~~

(A) An Applicant Candidate wishing to be certified as a Participating Candidate shall, on or before the date specified for the filing of candidate petitions in Albuquerque Code of Ordinances §2-4-13(C) as amended from time to time, file with the Clerk an application for such certification identifying the Candidate and the office sought and setting forth:

(1) the Candidate's affirmation under oath that he or she:

(a) has filed a petition pursuant to Albuquerque Code of Ordinances §2-4-13(C) which, to the best of the Candidate's knowledge, contains the number of valid signatures required by Article II, Section 4, of this Charter for placement of a Candidate's name on the ballot, and knows of no reason why he or she cannot

satisfy the requisites for being listed on the ballot under state law, this charter, and applicable city ordinances;

(b) for Candidates for Mayor, has collected Qualified Contributions of at least five dollars (\$5) each from one per cent (1%) of the registered voters in the city; and

(c) for Candidates for Councilor, has collected Qualified Contributions of at least \$5 each from one per cent (1%) of the registered voters in the council district in which the Candidate is running.

(d) has accepted no contributions other than Qualified Contributions for that municipal election cycle; and

(e) has made no expenditures from any source other than Qualified Contributions to the Candidate's campaign in that municipal election cycle;

(2) the Candidate's agreement that he or she:

(a) will not solicit, direct, or accept any contributions other than Qualified Contributions to his or her campaign in that municipal election cycle; and

(b) will not make any expenditure for the campaign from any source other than Qualified Contributions and distributions received from the Fund for that municipal election cycle;

(3) a list of all contributions received by the Candidate to date, showing for each contribution the amount thereof and the name and residential address of the contributor; and

(4) for each contribution listed pursuant to paragraph (A)(3) of this Section, a copy of the form signed by the contributor pursuant to Section 4(B) of this Article.

(B) As soon as practicable after the filing of a Candidate's application, the Clerk shall determine whether:

(1) the application satisfies the requirements of this Section;

(2) the Applicant Candidate has filed a petition pursuant to Albuquerque Code of Ordinances §2-4-13(C) containing the number of valid signatures required by Article II, Section 4, of this Charter for placement of the Applicant Candidate's name on the ballot;

(3) insofar as the Applicant Candidate's qualifications can presently be determined, he or she is otherwise able to satisfy the requisites for being listed on the ballot under state law, this charter and applicable city ordinances;

(4) the Applicant Candidate has collected the minimum number of Qualified Contributions required for certification as a Participating Candidate by paragraph (A)(1)(b) of this Section; and

(5) the Applicant Candidate has otherwise met the requirements for certification as a Participating Candidate under this Article.

The Clerk shall thereupon issue a decision, in accordance with the determinations so made per this Section (B), granting or refusing the Applicant Candidate's certification as a Participating Candidate.

(A) Qualified Contributions collected by an Applicant Candidate who fails to obtain certification as a Participating Candidate may be retained by the Candidate to be used in the Candidate's campaign in that municipal election cycle. All such contributions not previously disclosed in reports required under Section 7 of this Article shall be disclosed in campaign finance statements filed by the candidate pursuant to Section 4(c) of the Election Code. All such contributions shall be used in the candidate's campaign in that municipal election cycle and disposed of at the conclusion of the campaign in the manner prescribed by Section 4(f) of the Election Code.

~~Section 8.~~ Section 6. Guidelines and Restrictions for Contributions to and Expenditures of Participating Candidates and Applicant Candidates.

(A) All money contributed to an Applicant Candidate or contributed or distributed to a Participating Candidate shall be used for that ~~Participating Candidate's~~ campaign-related purposes in the election year in campaign for which the money was contributed or distributed.

(B) ~~A Participating Candidate shall limit total campaign Expenditures and debts to the amount of money distributed to that Participating Candidate from the Fund plus any collected Seed Money.~~ A Participating Candidate or an Applicant Candidate shall not accept contributions or loans other than Qualified Contributions and shall not make expenditures from any other source other than Qualified Contributions and distributions from the Fund.

(C) Within ~~two~~ five weeks after the regular municipal election, or within five weeks after any runoff election in which the Participating Candidate is involved, he or she shall return pay over to the Clerk for direct deposit into the Fund any amount ~~that is~~ received by the Participating Candidate from the Fund that remains unspent or unencumbered by the date of the municipal election as of that date.

(D) A Participating Candidate or Applicant Candidate shall not use revenues received from the Fund for personal use including to:

(1) pay any personal expenses of the candidate or the candidate's family;

(2) pay compensation to the Participating Candidate or the Participating Candidate's immediate family for goods or services provided by the Participating Candidate or the Participating Candidate's immediate family;

(3) pay any person for goods or services at more than fair market value;

~~(1) salary or payment to an individual unless that individual is providing bona fide services to the campaign and is compensated at fair market value;~~

~~(2) admission to a sporting event, concert, theater or other form of entertainment unless part of a specific campaign activity;~~

~~(3) dues, fees, parking or gratuities at a country club, health club or other recreational facility unless the costs are part of a specific fundraising event;~~

~~(4) mortgage, rent or household utility payments for any part of a personal residence;~~

~~(5) purchases of household food items or supplies; or~~

~~(6) purchase of clothing, other than items of de minimus value used in the campaign.~~

~~(E) A Participating Candidate shall not use revenues distributed from the Fund to:~~

~~(1) (4) contribute to or against or to support or oppose any other Candidate, any other candidate for any public office, political committee, or political advocacy committee; or~~

~~(2) Support or oppose any candidate, political committee or measure;~~

~~(3) use to repay any loans or debts or penalties;~~

~~(4) use to pay for consulting services to an individual unless the individual is providing bona fide services to the campaign and is compensated at fair market value; or~~

~~(5) use pay for out-of-state travel.~~

~~Section 9. Section 7. Candidate Reporting Requirements.~~

~~(A) The Clerk shall publish guidelines outlining permissible campaign-related Expenditures.~~

~~(B) Applicant Candidates shall file Qualifying Contributions with the Clerk during the Qualifying Period according to procedures developed by the Clerk. In developing these procedures, the Clerk~~

~~shall use existing campaign reporting procedures and deadlines whenever practical.~~

(B) A Participating Candidate or an Applicant Candidate who has received Qualified Contributions shall file periodic reports of such contributions. Reports so filed shall show, for each Contribution received and not previously included in an earlier report, the amount of each Contribution, the name, address, and telephone number of the contributor and the aggregate amount contributed to date by the same contributor in the same race. Reports shall be accompanied by copies of the forms required by Section 4(B) of this Article for the Contributions listed in the report.

(C) The reports required by Subsection (C) of this Section shall be filed on each of the dates prescribed for the filing of required campaign finance statements by Section 4(c)(2) of the Election Code. A Participating Candidate may also file reports of Qualified Contributions on the Friday of the tenth week and the Friday of the sixth week preceding the election.

~~(C)~~ (D) Participating Candidates and Applicant Candidates shall also report Expenditures according to the campaign reporting requirements specified in Section 4(c)(1)(C) of the Election Code. Reports of Expenditures shall be included in the reports filed pursuant to Subsections (B) and (C) of this Section.

(E) Campaign financial records of Participating Candidates and Applicant Candidates shall be maintained, preserved and submitted for inspection in the manner required by Subsection 4(h) of the Election Code.

~~Section 10.~~ Section 8. Fund Creation- Fund Use.

(A) There is created in the City Treasury the "Open and Ethical Elections Fund" solely for the purposes of:

(1) providing funds to financing the election campaigns of Participating Candidates for Covered Offices;

(2) paying administrative and enforcement costs of the Open and Ethical Elections Code; and

(3) carrying out all other specified provisions of the Open and Ethical Elections Code.

(B) The City Treasurer shall invest the Fund as other City funds are invested and pursuant to Section 4-1-10 ROA 1994, and all income derived from the Fund shall be credited directly to the Fund. Within 30 days after the end of each fiscal year, the City Treasurer shall furnish the Mayor and Council a report of all investment activity of the past year in connection with the administration of the Fund. Remaining balances at the end of a fiscal year shall remain in the Fund and shall not revert to the general Fund.

(C) Money received from the following sources shall be deposited directly into the Fund:

~~(1) Qualifying Contributions that have been submitted to the Clerk;~~

~~(2) (1) any recurring balance of unspent Fund money distributed to a Participating Candidate who does not remain a Participating Candidate through the municipal election period cycle for which the money was distributed;~~

~~(3) (2) money received from the Fund that remains unspent or unencumbered by a Participating Candidate following the date of the relevant regular municipal election or, for a Participating Candidate involved in a runoff election, following the date of the runoff election; and~~

~~(4) Seed Money that exceeds 10% of the applicable spending limit; and~~

~~(5) (3) additional money appropriated by the Council based on recommendations received by the Clerk and the City Attorney.~~

(D) One-tenth of 1% of the approved General Fund (Fund 110) appropriation shall be reserved in the Fund to fund Participating Candidates for the 2007 ~~regular~~ municipal election and subsequent ~~regular~~ municipal elections as provided in the Open and Ethical Elections Code.

(E) The Fund shall also be funded by voluntary contributions from members of the public. Money in the Fund is appropriated to the Clerk to carry out the purposes of the Open and Ethical Elections Code.

~~Section 11.~~ Section 9. Determination of Fund Amount.

(A) Once the Open and Ethical Elections Code is enacted, the Clerk shall prepare and provide to the Mayor and Council an annual report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of the Open and Ethical Elections Code.

(B) In the report, the Clerk shall set out the revenues received to date, the expected costs to the Fund for the next election cycle, and the amount of any annual appropriation from the Council that will be required to meet this need.

~~Section 12.~~ Section 10. Timing and Amount of Fund Distribution; Withdrawal of Candidates, Revocation of Certification, and Failure to Qualify For Ballot.

(A) ~~Beginning with the election cycle that ends with the 2007 regular municipal election~~ Within two business days of certifying an Applicant Candidate as a Participating Candidate, the Clerk shall distribute money from the Fund to Participating Candidates. ~~The Clerk shall distribute revenue as follows:~~

(1) ~~For Mayoral candidates~~ Candidates, ~~on April 1 of the year that a regular municipal election is held~~ one dollar (\$1.00) per registered voter in the city; and

~~(2) For Council candidates-Candidates, on June 1 of the year that a regular municipal election is held one dollar (\$1.00) per registered voter in the council district in which the candidate is running.~~

~~(B) The Clerk shall distribute the \$1.00 per registered City voter to Mayoral Participating Candidates and \$1.00 per registered City voter residing in the district in which the Participating Candidate desires to represent.~~

~~(C) The amount of revenue to be distributed to a Participating Candidate shall be reduced by an amount equal to the aggregate amount of Seed Money contributions received by the Participating Candidate during the Exploratory and Qualifying Periods and by Qualifying Contributions received by the Participating Candidate during the applicable Qualifying Period.~~

~~(D)~~ **(B)** A Participating Candidate may withdraw as a Participating Candidate by filing a written statement of withdrawal with the Clerk.

~~(E)~~ If the withdrawn Participating Candidate continues to participate in the election as a Non-Participating Candidate, then:

~~(1) at the time the statement of withdrawal is filed, the Candidate shall deliver to the Clerk, at the time the statement of withdrawal is filed, an amount of money equal to all monies distributed to the Candidate from the Fund after the Candidate was certified as a Participating Candidate plus interest of on the total amount of monies received at a rate of 12% per annum, ; and~~

~~(2) the candidate shall still be required to abide by the spending limits set forth in the Open and Ethical Elections Code.~~

(C) The Clerk may revoke a Candidate's certification as a Participating Candidate for any violation by the Candidate of the requirements of this Article, and may require a Candidate whose certification is so revoked to pay to the Clerk for deposit in the Fund an amount of money equal to all funds previously distributed to the

Candidate from the Fund plus interest thereon at a rate of no more than 12% per annum.

(D) Qualified Contributions collected by a Candidate who has withdrawn as a Participating Candidate or whose certification as a Participating Candidate has been revoked may be retained by the Candidate to be used in the Candidate's campaign in that municipal election. All such contributions not previously disclosed in reports filed under Section 7 of this Article shall be disclosed in campaign finance statements filed by the Candidate pursuant to Section 4(c) of the Election Code. All such contributions shall be used in the Candidate's campaign and disposed of at the conclusion of the campaign in the manner prescribed by Section 4(f) of the Election Code.

~~(F)~~ (E) If a Participating Candidate is not certified as a candidate, in accordance with applicable state and City law, or if then the candidate shall deliver to the Clerk an amount of money equal to all monies distributed to the candidate from the Fund after the candidate was certified as a Participating Candidate plus interest of the total amount of monies received at a rate of 12% per annum.

~~(G)~~ If a Participating Candidate entirely withdraws from a race for a Covered Office then he or she shall immediately ~~return~~ pay over to the city clerk any amount ~~to~~ received from the Fund that is unspent or unencumbered at the time he or she ceases to be a Participating Candidate, it being understood that Qualified Contributions collected to that point shall be deemed to have been spent or encumbered first, prior to ~~before a regular municipal election~~ spending or encumbering any amounts from the Fund.

~~Section 13. Independent Expenditure Disclosure Requirements.~~

~~A Person making an Independent Expenditure in an amount of \$100 or more or in an aggregate amount of \$100 or more shall comply with Article XIII, Section 4 of the City Charter.~~

~~Section 14.~~ Section 11. Adjustments to Fund Distribution.

~~(A) Once the certification of participation for Participating Candidates for a regular municipal election has been completed, the Clerk shall calculate the total amount of money to be distributed in the election cycle, based on the number of Participating Candidates and the allocations specified in Section 12 of the Open and Ethical Elections Code and shall then distribute the Fund revenue within two business days.~~

~~(B) If the allocations total amount of the distributions to Participating Candidates specified in Subsection A of this section is greater than Section 10 of this Article exceeds the total amount available for distribution from the Fund, then the amounts to be distributed to individual Participating Candidates shall each be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available each distribution shall be reduced in proportion to the amount of such excess.~~

~~Section 15.~~ Section 12. Run Off Elections.

(A) On the Friday after a municipal election when the election results are certified, the Clerk shall issue Fund revenue to each Participating Candidate involved in a runoff election in the following amounts:

(1) for ~~Mayoral candidates~~ Candidates, \$0.33 per registered City voter; and

(2) for ~~Council candidates~~ Candidates, \$0.33 per registered City voter residing in a the Council district in which the Candidate is running.

(B) If the total amount of the distributions specified in Subsection A of this Section exceeds the total amount available for distribution from the Fund, each distribution shall be reduced in proportion to the amount of such excess.

~~Section 16.~~ Section 13. Matching Funds Opposing Funds.

~~During the course of a regular municipal election or a run-off election, when a Participating Candidate's Opposing Funds in aggregate amount are greater than the funds distributed plus any Seed Money spent to a Participating Candidate in the same race, then the Participating Candidate is entitled to receive matching funds in the amount that the Opposing Funds exceed the distribution from the Fund plus any Seed Money spent. Total Opposing Funds to a Participating Candidate in an election are limited to twice the amount originally distributed to that Candidate pursuant to Section 12 of the Open and Ethical Elections Code. If the allocation of Opposing Funds is greater than the total amount available for distribution, then the amounts distributed to a Participating Candidate shall be reduced by the same percentage as the reduction by which the total amount needed has been reduced relative to the total amount available.~~

(A) In addition to the distributions specified in Sections 10 through 12 of this Article, the Clerk shall pay to each Participating Candidate an amount equal to four times the amount of Qualified Contributions received and reported by the Candidate pursuant to Sections 4 and 7 of this Article.

(B) Additional payments to Participating Candidates required by Subsection (A) of this Section shall be made within one business day of the filing of each report of Qualified Contributions documenting the Participating Candidate's entitlement to such payment.

(C) Notwithstanding the foregoing, no additional payment to a Participating Candidate shall be made for Qualified Contributions shown on reports filed the twelfth week preceding the election, the last week preceding the election, after the election unless the Participating Candidate is involved in a runoff, or after a runoff election; and no such payment shall be made for contributions

shown on the list of Qualified Contributions that was filed with the Participating Candidate's application for certification under Section 5(A)(3) of this Article until such contributions have been reported anew in a report of Qualified Contributions filed pursuant to Section 7 of this Article.

(D) The aggregate amount of payments made to any Participating Candidate pursuant to this Section shall not exceed two hundred percent (200%) of the amount initially distributed to the Participating Candidate pursuant to Sections 10 through 12 of this Article.

(E) If the amount of the additional payments required to be made to Participating Candidates under this Section on any given date exceeds the total amount available for distribution from the Fund, such additional payments shall be reduced in proportion to the amount of such excess.

~~Section 17.~~ Section 14. Communication of Participation Status to Voters.

Once a candidate Candidate is certified as a Participating Candidate, the Clerk shall publish a statement on the Internet that the candidate Candidate is a Participating Candidate who has agreed to the terms and conditions of the Open and Ethical Elections Code.

~~Section 18.~~ Section 15. Adjustments for Inflation and Population Growth.

The City Attorney and the Clerk shall periodically review the dollar amounts specified in the Open and Ethical Elections Code periodically. The City Attorney and Clerk shall recommend any necessary adjustments to reflect inflation or population change to the Council and Mayor to consider amendments to the Code.

~~Section 19.~~ Section 16. Administration- Clerk-- Duties.

(A) The Clerk with the assistance of the City Attorney shall adopt rules to ~~insure~~ ensure effective administration of the Open and Ethical Elections Code.

(B) The rules shall include procedures for:

(1) candidate qualifications, certification, and disbursement of revenues and return of unspent Fund revenues;

(2) obtaining ~~Qualifying~~ Qualified Contributions;

(3) certification of a Candidate's participation;

(4) receipt and reporting of Qualified Contributions and additional matching payments for such contributions;

~~(4)~~ (5) collection of revenues; and

~~(5)~~ (6) return of Fund disbursements and other money to the Fund.

(C) The Clerk shall provide the public with educational materials relating to the provisions of the Open and Ethical Elections Code.

~~Section 20.~~ Section 17. Appeals.

The procedure for challenging a ~~certification of participation decision~~ decision of the clerk to grant, deny, or revoke a Candidate's certification as a Participating Candidate under Section 5 or Section 10 of this Article or a determination by the clerk whether or to what extent a Participating Candidate is eligible for matching funds ~~by the Clerk under Section 13 of this Article~~ is as follows:

(A) A person aggrieved by a ~~certification of participation decision or a decision regarding the distribution of matching Funds~~ the Clerk's decision may appeal to the Clerk within three days of the decision. The appeal shall be in writing and shall set forth the reasons for appeal;

(B) within five days after an appeal is properly made, and after due notice is given to the parties in dispute, the City Hearing Officer shall hold a hearing whereby:

(1) the appellant has the burden of providing evidence to demonstrate that the Clerk's decision was improper; and

(2) the City Hearing Officer shall rule on the appeal within three days after the completion of the hearing;

(C) the parties in dispute may appeal the decision of the City Hearing Officer by commencing an action in district court pursuant to New Mexico Rule of Civil Procedure 1-074; and

~~(D) Participating Candidates whose certification of participation is revoked on appeal may be required to return to the Clerk up to all money distributed from the Fund.~~ If the City Hearing Officer or court finds that an appeal was made frivolously or to result in cause delay or hardship, the City Hearing Officer or court may shall sanction the moving party by requiring the party to pay the opposing party's(ies') attorney's fees and ~~court cost of the administrative~~ and/or court hearing costs. ~~the court hearing and the opposing parties.~~ Any sanction imposed under this section may be appealed by the sanctioned party to the court next in line to consider the appeal.

(E) For the purposes of this section, "parties in dispute" includes the City.

~~Section 21.~~ Section 18. Penalties- Enforcement

The Board of Ethics and Campaign Practices shall enforce the Open and Ethical Elections Code pursuant to Articles XII and XIII of the City Charter."

SECTION 2. TIME OF FILING WITH THE CITY CLERK. The Director of City Council Services, or designee, shall file the proposed amendment described in Section 1 above with the City Clerk within the ninety days immediately preceding the October 6, 2015 City of Albuquerque municipal election.

SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, word or phrase of this proposition is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this proposition. The Council hereby

declares that it would have passed this proposition and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 4. EFFECTIVE DATE. This proposition is effective immediately. The Charter Amendment described in Section 1 of this proposition shall take effect immediately following the certification of the election if approved by the voters.

Recommendations to Current Proposals before Council

The 2015 Charter Review Task Force was also asked to review and present recommendations to the Council on proposals before the council:

- a. [P-15-8](#) To Be Submitted To The Voters On The City Of Albuquerque Municipal Election Ballot Of October 6, 2015, Amending Article V, Section 4 Of The Charter Of The City Of Albuquerque, Concerning The Duties Of The Mayor; Specifying That The Appointment Of The Chief Of Police And Fire Chief Will Require The Advice And Consent Of The City Council

In respect to P-15-8 it is the recommendation of this Task Force that this proposal be amended to require the Council's advice and consent of both the Chief of Police and the Fire Chief. This recommendation further suggests to strike the language that allows for the "removal for cause" of both the Chief of Police and Fire Chief. This recommendation was passed on a 10-4 vote. Those who voted against the measure believed that current system should be maintained.

- b. [P-15-9](#) Adopting A Proposition To Be Submitted To The Voters At The October 6, 2015 City Of Albuquerque Municipal Election Ballot That Amends Article III, Section 3 Of The Charter Of The City Of Albuquerque, Concerning Direct Legislation By Voter Initiative So That Proposed Measures Shall Be Submitted To The City's Electors Only At General Elections Or Regular Municipal Elections; And That Amends The Calculation For The Minimum Number Of Petition Signatures

In respect to P-15-9 it is the recommendation of this Task Force that this proposal be approved. (Subject to the addition of language that would ensure that election notice and procedure be followed.)

- c. [P-15-10](#) Adopting A Proposition To Be Submitted To The Voters At The October 6, 2015 City Of Albuquerque Municipal Election That Amends Article VI Of The Charter Of The City Of Albuquerque Concerning Charter Amendments

In respect to P-15-10 it is the recommendation of this Task Force that this proposal be set to the votes, but with an additional requirement that the full text of a Charter Amendment be made available at the polling location.

- d. [P-15-11](#) To Be Submitted To The Voters On The Municipal Election Ballot Of October 6, 2015, Adding A New Article “XX” To The City Charter To Provide For The Election Of The Chief Of Police And To Amend Articles II, III, XII, XIII, XVI, AND XVIII To Provide A Process For Electing The Chief Of Police And Determining A Salary For That Position

In respect to P-15-11 the Task Force moved to oppose the proposal unanimously.

Report
Mayoral Appointees to the
2015 City Charter Review Task Force

City of Albuquerque, New Mexico
June 15, 2015

On a number of proposals considered by the 2015 City Charter Review Task Force, the Mayoral appointees note that they were in the minority on several votes. This is largely a reflection of broad policy considerations important to the Mayoral appointees and less a matter of the “nuts and bolts” of the issue under specific consideration. The debate sometimes centered on the “nuts and bolts” of the issues under specific consideration, rather than whether the matters under debate are a proper subject of city government regulation or are constitutional under state and federal law, which is not to say that the Task Force was unmindful of those issues or disregarded them; the City Attorney’s office provided guidance on those issues.

For example, the Mayoral appointees were not satisfied that the public financing of campaigns under Article XVI, Open and Ethical Elections Code, as proposed and recommended by majority vote of the Task Force, met the mandate of the Anti-Donation Clause of the New Mexico Constitution, Article IX, Section 14. While the purpose of Article XVI, Open and Ethical Elections Code, is laudable, compliance with the New Mexico Constitution is a countervailing consideration. However, it does not necessarily follow that any incumbent officeholders’ or former candidates’ use of public financing under the current Charter is unconstitutional or suspect; it simply means that this question is an open one that should be more fully explored. Likewise, the Mayoral appointees were not satisfied that diluting mayoral accountability in favor of council advice and consent on the appointment of the Chief of Police and the Fire Chief was a wise recommendation.

At base, the Mayoral appointees voted to recommend limited government, traditional separation of powers among the mayoral department and the legislative council, and a strong mayor form of government with the concomitant mayoral accountability that goes with it