

## **2019 REGULATIONS OF THE ALBUQUERQUE CITY CLERK FOR THE ELECTION CODE**

**PURPOSE:** In 2018, following the implementation of the State Local Election Act, the City Council passed Election Code Reform. The purpose of this reform was to bring the City in line with the Local Election Act, to ensure that the Election Code is administered fairly and consistently, and to provide transparency for voters and accountability to candidates and Officials. The purpose of these Regulations is to provide guidance and instruction in keeping with the reform passed by Council, and to establish clear procedures that candidates shall follow under the Election Code, Albuquerque City Charter Article XIII (hereinafter referred to as “the Code”, with all citations referring to the Code unless otherwise noted). The City Clerk shall create forms, election calendars, timelines and all other documents necessary to implement these Regulations. In conformance with the Code and these Regulations, the documents and forms created by the City Clerk are not part of these Regulations.

**AUTHORITY:** Section 9 of the Code authorizes the City Clerk to adopt rules to insure the effective administration of the Code.

**APPLICABILITY:** These Regulations apply to all candidates for the offices of Mayor and City Council, and should be read in combination with the Regulations for the Open and Ethical Elections Code (“OEEC”) by candidates who seek eligibility to receive public funds or become Participating Candidates under the OEEC.

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

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

### **PART A      DEFINITIONS**

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

**Broadly Distributed:** Any communication delivered by a campaign, candidate, Measure Finance Committee, or their agents, that is sent, delivered or transmitted to more than 100 people.

**Campaign Materials:** Any published, printed or Broadly Distributed advertising or communications including but not limited to paid or donated advertisements, handbills, petitions, circulars, letters, radio, television or internet broadcasts, cable distributions, electronic or

telephonic transmissions, or similar communication materials or methods used in a campaign either for or against any candidate.

**Contribution:** In addition to the definition in City Charter Article XIII, § 2(g), please see Part H, below.

**Coordinated Expenditure:** In addition to the definition in City Charter Article XIII, § 2(o), if an Expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate's opponent(s), and the Expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the Expenditure is considered to be a Contribution from the spender to the candidate. As used within this definition, the term "candidate" includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee. For more information regarding coordination, please refer to Part C.

**Covered Office:** City Council or Mayor

**Electioneering Communication:** Any audio or visual communication broadcasted by any means that:

1. unambiguously refers to any candidate; and
2. is broadcasted, printed, mailed, delivered or distributed within 60 days of a regular or special election, or 45 days of a runoff 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.

**Expenditure:** In addition to the definition included in Article XIII, Section 2(j), please see Part B, below.

**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 or ballot measure, 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, or other explicit references to a candidate or ballot measure that indicate intent to influence an election.

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

**Independent Expenditure:** In addition to the definition included in Article XIII, Section 2(n), please refer to Part D, below.

**In-Kind Contribution:** In addition to the definition included in Article XIII, Section 2(p), "In-Kind Contributions" are goods and services, other than money, that are donated or provided to the campaign at no cost or at a cost that is less than the usual and customary charge, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee. For more information regarding "In-Kind Contributions," please refer to Part E.

**Mass Communication:** Any communication of substantially identical content to 100 or more individuals within three (3) months of a regular or special election, or within 45 days of a run-off election. This includes communications sent directly to individuals, and communications placed in areas where they will be seen by one hundred (100) or more individuals, such as signs.

**Person:** Any individual, cooperative association, club, corporation, company, firm, partnership, joint venture syndicate, profit or nonprofit organization, or other entity.

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

## PART B EXPENDITURES

1. In addition to the definition included in Article XIII, Section 2(j), "Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An Expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

2. A payment is made for political purposes if it is made for the purpose of influencing or attempting to influence the action of the voters for or against the election of a candidate or candidates, or the qualification or passage of any measure.

3. Candidates may not make Expenditures of campaign funds to pay civil penalties, fines, or forfeitures to the Board of Ethics.

4. Expenditures of campaign funds for personal use is prohibited. Personal use is any use of campaign funds of a candidate (or former candidate) to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or responsibilities as a officeholder.

5. The payment of legal fees to advise a candidate on compliance with campaign laws or regulations, and payment of legal fees or court costs to represent a candidate or candidate committee in any action reasonably related to the campaign or election in which the candidate or committee has been named as a defendant, are expenditures that must be disclosed, but are not subject to any expenditure limits in the Charter.

6. Candidates who seek eligibility to receive public funds or become Participating Candidates under the OEEC should refer to the OEEC Regulations for additional guidance on Expenditures under the OEEC.

## **PART C COORDINATED EXPENDITURES**

If an Expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate's opponent(s), and the Expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the Expenditure is considered to be a Coordinated Expenditure, and is a Contribution from the spender to the candidate. As used within this subsection, the term "candidate" includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.

1. In cooperation, consultation or in concert with includes, but is not limited to:
  - a. Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and
  - b. Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.
2. An Expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when:
  - a. the Expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the Expenditure, has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid decision-

- making position in the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate; or
- b. when the candidate has directly shared the candidate's campaign plans, activities, polling, research, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate.
  - c. The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.
3. If a candidate requests that a party committee, political action committee, measure finance committee, or other potential spender not make any Expenditure to promote or support the candidate, or oppose or defeat the candidate's opponent(s), the request does not constitute cooperation or coordination.
4. An Expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because:
- a. the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;
  - b. the spender has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;
  - c. the spender makes an Expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the Expenditure relating to the details of the Expenditure;
  - d. the spender has also made a Contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;
  - e. the Expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and the families thereof; or
  - f. the Expenditure is made by an individual who spends \$100 or less for costs associated with a sign that is lettered or printed individually by hand or that reproduces or replicates a candidate's campaign-related design or graphic.
5. **Correct Reporting:** It is acceptable for Participating Candidates to partake in Coordinated Expenditures, so long as the Expenditures are reported as such by all persons and entities involved with the Expenditure.

## **PART D INDEPENDENT EXPENDITURES**

1. **Independent Expenditures; definition.** For the purposes of this Part, an "Independent Expenditure" is presumed to be:

- a. Any funds spent on Express Advocacy or Electioneering Communications that are made without the cooperation, consultation or coordination with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent thereof. An Independent Expenditure may include materials already distributed to the public or broadcast by a candidate, the candidates authorized committee or an agent thereof.
  - b. Independent Expenditures may consist of materials previously made public by the campaign without implying coordination by the campaign.
2. **Rebutting presumption.** A person presumed under this Part to have made an Independent Expenditure may rebut the presumption by filing a signed written statement with the Board of Ethics within 48 hours of making the Expenditure stating:
  - a. The cost was not an Expenditure, supported by any additional evidence the person chooses to submit; or
  - b. That the Expenditure was made in cooperation, consultation or coordination with, or at the request or suggestion of, a candidate, a candidate's authorized committee or an agent thereof, supported by any additional evidence the person chooses to submit.
3. **Report required; content; rules.** A person, party committee, political committee or political action committee, or measure finance committee that makes any Independent Expenditure in excess of \$100 during any one candidate's election, or in support or opposition of any one issue before the voters, shall file a report with the City Clerk in compliance with Article XIII, Section 4 of the City Charter.
  - a. A report required by this subpart must contain an itemized account of each Expenditure in excess of \$100 in any one candidate's election, the date and purpose of each Expenditure and the name of each payee or creditor. The report must state whether the Expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, a statement under oath or affirmation whether the Expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate or an authorized committee or agent of a candidate.
4. **Disclosure.** Any literature or advertisement that is purchased with monies from a person, measure finance committee, corporation, limited liability company, organization or other entity making an Independent Expenditure in an attempt to influence the outcome of an election shall disclose the name of the person, measure finance committee, corporation, limited liability company, organization or other entity making the Expenditure. Any disclosure statement required by this Part shall be printed clearly and legibly in a conspicuous manner. The disclosure statement shall include the words "paid for by" followed by the name of the entity making the Expenditure and shall state that it is not authorized by any candidate or candidate's campaign committee. The disclosure statement shall include an internet address that links to the entity's campaign finance reports. Disclosure statements shall also comply with the following:
  - a. If the communication is communicated via audio broadcast by any means, the disclosure shall be spoken at the end of the communication.

- b. If the communication is communicated via visual broadcast by any means, the disclosure shall be printed clearly and legibly in a conspicuous manner. Text must appear in letters equal to or greater than 4% of the vertical picture height, be visible for the entirety of the communication, and be in a color that has a reasonable degree of contrast with the background of the communication.
- c. All disclosures must be clear and conspicuous regardless of the medium in which the communication is transmitted. A disclosure is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked.

**5. Exclusions.** An Independent Expenditure does not include:

- a. An Expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- b. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;
- c. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and
- d. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

**Allegations and Complaints:** Persons wishing to report an allegation that an Independent Expenditure is a suspected Coordinated Expenditure must file a Complaint with the City Clerk in accordance with the Complaint Diversion Rule in Part I, below.

## **PART E IN-KIND CONTRIBUTIONS**

1. "In-Kind Contributions" are goods and services, other than money, that are donated or provided to the campaign at no cost or at a 20% or higher discount from the usual and customary charge. The following activities are examples of In-Kind Contributions:
  - a. A supporter of a candidate purchases campaign signs for distribution by the campaign and is not reimbursed by the campaign;
  - b. A supporter of a candidate pays for some of the candidate's advertising in a community newspaper and is not reimbursed by the campaign;
  - c. A copy shop owner provides the campaign with a discount of 20% or more on printing services;
  - d. A volunteer who is making signs to give to the candidate buys plywood and paint and is not reimbursed by the campaign;
  - e. The owner of a local business provides the campaign, free of charge, some of their paid staff members to work for the campaign on company time;
  - f. A commercial vendor extends credit to the campaign under terms that are not substantially similar to the terms extended in the ordinary course of business to nonpolitical customers.

2. Contributors seeking to make an In-Kind Contribution of goods by paying for those goods must pay the vendor directly. If a contributor gives a monetary Contribution to a candidate, campaign, or MFC directly, even if the intent is that the monetary Contribution be used to pay for specific goods, the Contribution must be reported as a monetary Contribution to the candidate, campaign, or MFC, not an In-Kind Contribution.
3. If a campaign receives an In-Kind Contribution, the campaign must report the fair market value of the Contribution, which is what the goods or services would have cost the campaign if it had paid cash for the donated goods or services. If the campaign received a discount of 20% or more on goods or services, the discount is the amount of the In-Kind Contribution.
4. Professional services, including legal services, accounting services, consulting services and similar services provided directly from the professional to the Candidate are permitted, provided no single In-Kind Contributor exceeds the limits set in the Charter.
  - a. If a professional provides free of charge or at a discount of 20% or more, the kind of occupational services that the professional otherwise provides for compensation, that is an In-Kind Contribution. However, if a professional volunteers their time providing services that they do not otherwise provide for compensation, that is not an In-Kind Contribution. By way of example only:
    - i. If an accountant provides a campaign with free accounting services, that is an In-Kind Contribution that must be reported and will count against In-Kind Contribution limits.
    - ii. If an accountant volunteers their time going door-to-door for a candidate, that is volunteer work, does not need to be reported, and does not count against In-Kind Contribution limits.
    - iii. If a graphic designer provides a campaign with free design services, that is an In-Kind Contribution that must be reported and will count against In-Kind Contribution limits.
    - iv. If a graphic designer volunteers their time assisting a candidate with speech preparation, that is volunteer work, does not need to be reported, and does not count against In-Kind Contribution limits.
5. Other In-Kind Contributions
  - a. *Food, Drink and Office Supplies.* Contributions of food, drinks, and/or office supplies that have a cumulative fair market value of one hundred dollars (\$100.00) per election cycle or more must be reported as In-Kind Contributions.
  - b. *Volunteer Services vs. Paid Assistance.* Individuals are permitted to provide their services for free to the campaign as volunteers. However, if the volunteer provides their services with the knowledge of their employer during their paid work-time, then the employer has made a Contribution to the campaign.
  - c. *Appearing in Advertising Sponsored by Third-Parties.* If an individual or organization invites the candidate to appear in a paid advertisement, and the advertisement airs within one hundred (100) days of an election and primarily features the candidate, the value of the advertising *could* be considered a Contribution to their campaign. If the advertisement qualifies as a Contribution, the candidate would be required to report receiving the value



of the Contribution. It would count toward the Contribution limit. Contact the City Clerk to receive advice on what factors the Board of Ethics might consider in determining whether the advertisement would be a Contribution.

- d. *Polling and Research.* If an individual or organization provides a campaign or MFC with polling and research at no cost, or at a discount of 20% or more, that is an In-Kind Contribution that must be disclosed.
- e. *Services Contributed Through a Candidate's Business Entity.* If a candidate has a business entity, and that entity provides goods or services to the campaign without charge, or at a discount of 20% or more, those contributions are In-Kind Contributions that must be disclosed.
- f. *Coordinated Expenditures v. Independent Expenditures.* Coordinated Expenditures must be reported as In-Kind Contributions. Independent Expenditures are not In-Kind Contributions. A candidate is allowed to ask others not to spend money in support of their candidacy. Even if another person or organization were to spend money subsequently, merely making a request *not* to make an Independent Expenditure would not by itself constitute coordination.

## **PART F PUBLICATION OR DISTRIBUTION OF POLITICAL COMMUNICATIONS**

**1. Authorized by candidate.** Whenever a person makes an Expenditure to finance a audio or visual communication advocating the election or defeat of a candidate or ballot measure through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, email, text messages, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the Expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast only by audio means, only the city and state of the address of the person who financed the communication must be stated.

**2. Not authorized by candidate.** If the communication described in subpart 1 is not authorized by a candidate, a candidate's authorized committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the Expenditure for the communication, except that a communication broadcast only by audio means is only required to state the city and state of the address of the person that financed the communication. If the communication is in visual form, the communication must contain at the bottom of the communication in print that is equal to or greater than 4% of the vertical picture height, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

These words must be visible for the entirety of the communication, and be in a color that has a reasonable degree of contrast with the background of the advertisement.

**3. Other communications.** Whenever a person makes an Expenditure to finance a communication that is made for the purposes of influencing the election or defeat of a candidate or ballot measure and that is disseminated during the 60 days before a regular or special election, or 45 days before a runoff election, through the media described in subpart 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast only by audio is only required to state the city and state of the address of the person that financed the communication. The disclosure is only required if the communication was made for the purpose of influencing the election.

**4. In-Kind Contributions of printed materials.** A candidate, measure finance committee, political committee or political action committee shall report on the campaign finance report as a Contribution to the candidate, measure finance committee, political committee or political action committee any Contributions of In-Kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any In-Kind Contributions of printed materials used or distributed by a candidate, measure finance committee, political committee or political action committee must include the name or title of that candidate, measure finance committee, political committee or political action committee as the authorizing agent for the printing and distribution of the In-Kind Contribution.

**5. Broadcasting prohibited without disclosure.** No person operating a broadcasting station or cable television system within the City of Albuquerque may broadcast any communication, as described in subparts 1 to 3, without an oral or written visual announcement of the disclosure required by this rule.

**6. Newspapers.** A newspaper may not publish a communication described in subparts 1 to 3 without including the disclosure required by this Part. For purposes of this subpart, “newspaper” includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the City Clerk regarding whether or not the communication requires the disclosure.

**7. Enforcement.** A violation of Part F may result in a civil penalty of no more than 100% of the amount of the Expenditure in violation, except that an Expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$500. In assessing a civil penalty, the Board of Ethics shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after

receiving notification of the violation from the commission by adding the missing information to the communication, the Board of Ethics may decide to assess no civil penalty.

**8. Telephone calls, text messages, emails, and social media posts.** Prerecorded automated telephone calls, scripted live telephone communications, text messages, emails, and social media posts that name a clearly identified candidate during the 60 days before a regular or special election, or the 45 days before a runoff election, must clearly state the name of the person who made or financed the Expenditure for the communication. Telephone calls, text messages, emails, and social media posts made for the purposes of researching the views of voters are not required to include the disclosure.

**9. Exclusions.** The requirements of this rule do not apply to:

- a. Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the City Clerk and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, measure finance committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, measure finance committee, party committee, political action committee or ballot question committee;
- b. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the City Clerk and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, measure finance committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, measure finance committee, party committee, political action committee or ballot question committee;
- c. Internet and e-mail activities costing less than \$100, paid for by one or more individuals who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, measure finance committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, measure finance committee, party committee, political action committee or ballot question committee;
- d. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand.

## **PART G MEASURE FINANCE COMMITTEES**

1. "Measure Finance Committee" (MFC) means a political committee or any person or combination of two or more persons acting jointly in aid 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 on the ballot pursuant to Article III of the Charter, voter approval or disapproval of one or more measures on the ballot and/or the election to, or recall from, office of one or

more candidates for office when such person or people have accepted Contributions in excess of \$250 or make Expenditures in excess of \$250 for any of the purposes listed heretofore.

2. MFCs include:
  - a. Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign or election;
  - b. Any organization, including any corporation or association, that has as its major purpose initiating or influencing a campaign or election and that receives Contributions or makes Expenditures aggregating more than \$250 for that purpose; and
  - c. Any organization that does not have as its major purpose influencing candidate or ballot measure elections but that receives Contributions or makes Expenditures aggregating more than \$250 for the purpose of influencing the nomination or election of any candidate to political office.
  
3. MFCs Apply to Candidate Elections, Ballot Measure Questions and Referenda. Advocacy, charitable, or other organizations that are interested in raising and spending money to influence a the election of a candidate, a ballot question or referendum are required to form an MFC for that purpose, and file campaign finance reports with the City Clerk.
  - a. If an organization receives or spends more than \$250 to initiate or influence the outcome of an election, ballot question or referendum, then the organization would be considered a MFC and would have to register and file campaign finance reports with the City Clerk.
  - b. If an organization's only financial activity is to make a Contribution to a MFC that will disclose the Contribution in a campaign finance report, the organization does not have to register with the City Clerk. However, if the organization has raised funds for the purpose of contributing to a MFC, rather than from the organization's general treasury, it will trigger the registration requirement.
  - c. The requirement to register as a MFC also applies to an individual who raises or spends more than \$250 to initiate or influence an election, ballot question or referendum. However, if an individual uses *his or her own funds* to make a Contribution to a MFC, he or she would not qualify as a MFC, *provided that the funds used to make the Contribution were not obtained from another source in order to make the Contribution.*
  
4. When to Register and File an Initial Report
  - a. If the total amount of Contributions received or Expenditures made by an organization to initiate or influence the outcome of an election, ballot question, or referendum exceeds \$250, the organization is required to register and file an initial campaign finance report with the City Clerk in accordance with Article XIII, Section 4 of the City Charter.
  - b. *All campaign activity leading up the \$250 threshold must be reported on the initial report.* The start date for the initial report is the date of the first Contribution, general treasury transfer, or Expenditure, whichever is earlier, even if it is not in the same calendar year as the election.
  - c. The organization is required to report only those Contributions and Expenditures that have been made for the purpose of initiating or influencing a candidate's election, a

ballot question or referendum. If the organization uses funds from its general treasury, those amounts must be reported as Contributions from the organization.

- d. In campaign finance reports, the organization must include an itemization of all Contributions, including the name and address of each contributor, and the contributor's occupation and employer. Every Expenditure made to support or oppose a candidate, ballot question or referendum must be reported, including Expenditures for the collection of signatures for a direct initiative.
- e. The City Clerk views Contributions received and Expenditures made by opponents of a citizen initiative during the signature-gathering phase as Contributions and Expenditures to influence an election which would count towards the threshold.
- f. If the organization uses paid staff to work on its efforts to influence a candidate's election, a ballot question, or referendum, the amount of compensation for staff time must be reported as an Expenditure. Goods or services, including donated staff time, the organization receives from other organizations or individuals must be reported as In-Kind Contributions.

## **PART H CONTRIBUTIONS**

1. No person may make a Contribution in the name of another person or knowingly permit his or her name to be used to accomplish such a Contribution. No person may knowingly accept a Contribution made by one person in the name of another. The contributor identified in reports submitted to the City Clerk must be the actual source of funds for the Contribution.
2. The term "Contribution" includes:
  - a. A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to elected office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
  - b. A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
  - c. Funds received by a candidate or a measure finance committee that are transferred to the candidate or committee from another political committee or other source; and
  - d. The payment, by any person other than a candidate or a measure finance committee, of compensation for the personal services of other persons that are provided to the candidate or committee without charge for any such purpose.
3. The term "Contribution" does not include:
  - a. The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or measure finance committee;
  - b. Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by that individual, if the cumulative amount of these expenses does not exceed \$350 with respect to any election;

- c. Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's Immediate Family;
  - d. Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of the City Charter, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
  - e. Compensation paid by a political party committee to its employees for the following purposes:
    - i. Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
    - ii. Coordinating campaign events involving 3 or more candidates;
    - iii. Campaign training sessions provided to 3 or more candidates;
  - f. Costs paid for by a political party committee in connection with a campaign event at which 3 or more candidates are present;
  - g. The use or distribution of any communication, as described in the City Clerk's Rule on Political Communications in Part E, obtained by the candidate for a previous election and fully paid for during that election;
  - h. Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;
  - i. A candidate's own services and property, other than cash;
  - j. The use of a dwelling unit and residential premises incidental thereto for any campaign purpose and the provision of refreshments and entertainment in connection with such use;
  - k. The services of the person who is performing the duties of the candidate's treasurer; or
  - l. The use of vehicles for any campaign purpose other than in connection with the performance of a commercial or professional service.
4. The payment or waiver of legal fees to advise a candidate on compliance with campaign laws or regulations, and payment or waiver of legal fees or court costs to represent a candidate or candidate committee in any action reasonably related to the campaign or election in which the candidate or committee has been named as a defendant, are contributions that must be disclosed, but are not subject to any contribution limits in the Charter.
5. Candidates who seek eligibility to receive public funds or become Participating Candidates under the OEEC should refer to the OEEC Regulations for additional guidance on Contributions under the OEEC.

## **PART I COMPLAINT DIVERSION PROCESS RULE**

1. Charges of Violations.

- a. Any charge or charges that a candidate, candidate's committee, Measure Finance Committee, or any other group has committed a violation of the Election Code, Code of Ethics, Open and Ethical Elections Code, or the Rules and Regulations promulgated by the Board or the City Clerk shall be made in writing, notarized and brought before the City Clerk.
- b. The complaint must meet the following criteria in order to be considered sufficient:
  - i. The Clerk's complaint form has been used and all information requested by the form has been provided on the form, including:
    - 1. Complainant's name, address, and telephone number;
    - 2. The Respondent's name, address, and telephone number;
    - 3. If the Respondent is a candidate, the office or position sought;
    - 4. Whether Complainant has filed this complaint with any law enforcement agency, and if so, which one(s). A copy of complaints filed with any law enforcement agency must be attached to the complaint;
    - 5. A description in reasonable detail of the alleged violation, including the Section(s) or Part(s) of the Election Code, Code of Ethics, Open and Ethical Elections Code, or Rules and Regulations of the Board or City Clerk that the Complainant believes were violated, an explanation of how the Complainant believes the Election Code, Code of Ethics, Open and Ethical Elections Code, or Rules and Regulations of the Board or City Clerk were violated, and any other pertinent information;
    - 6. A description of the inquiry undertaken regarding the alleged violation;
    - 7. Evidence that supports the Complainant's allegations, including but not limited to:
      - a. The names/telephone numbers of persons whom Complainant believes may be witnesses to the facts;
      - b. A copy or picture of any political advertisement(s) Complainant references;
      - c. A copy of each document Complainant references; and
      - d. Any other evidence supporting Complainant's allegations;
    - 8. A certification that: To the best of Complainant's knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence;
      - a. If, after a reasonable inquiry under the circumstances, the Complainant is unable to certify that certain specifically identified factual contentions of the complaint are supported by evidence, the Complainant may also certify that: To the best of Complainant's knowledge, information, and belief, there are grounds to conclude that those specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry;
    - 9. The Complainant's notarized signature immediately after the certification or certifications.
  - ii. A single Respondent has been named in the complaint. A complaint cannot be filed against more than one person;

- iii. The complaint has not been submitted anonymously;
  - iv. All exhibits or attachments referenced in the complaint have been included with the complaint;
  - v. The complaint was signed by the Complainant under oath in the presence of a notary public or other person authorized by law to administer oaths;
  - vi. The complaint contains the original signature of the Complainant;
  - vii. The complaint alleges a violation of the Election Code, Code of Ethics, Open and Ethical Elections Code, or Rules and Regulations of the Board or City Clerk;
  - viii. The complaint contains specific facts upon which the Complainant bases the allegation of a violation of the Election Code, Code of Ethics, Open and Ethical Elections Code, or Rules and Regulations of the Board or City Clerk;
  - ix. The complaint alleges a violation that occurred within 120 days of the date the complaint is filed with the City Clerk; and
  - x. The complaint is based on personal knowledge or information other than hearsay. Complainant should differentiate between statements based on the Complainant's personal knowledge and those based on information and belief. Statements not based on personal knowledge should identify the source of the information.
- c. Upon receipt of the filed complaint, the City Clerk must immediately notify the respondent and provide the respondent with a copy of the complaint by the most expeditious means available.
  - d. Notwithstanding any other provision of the Rules and Regulations of the Board, within five business days after the complaint is filed with the City Clerk, the City Clerk will review the complaint to ensure that it meets all of the requirements of subpart a(2)(i)-(x) of this Part. The City Clerk's review is only for facial compliance with the requirements of subpart a(2)(i)-(x). The City Clerk shall not make any determinations regarding the merits of the complaint at this stage.
  - e. If the complaint fails to comply with one or more of the requirements of subpart a(2)(i)-(x) of this Part or is otherwise incomplete, the City Clerk must reject the complaint and give written notice to the Board, the Complainant, and the Respondent of the reasons for the rejection. The Complainant may file a new complaint or appeal the City Clerk's rejection to the Board.
  - f. Within five business days after the complaint is filed with the City Clerk, if the City Clerk determines that the complaint meets all of the requirements of subpart a(2)(i)-(x) of this Part, the City Clerk may attempt to require the Respondent correct the violation or prevent further violations by informal methods and may enter into a voluntary compliance agreement with the Respondent prior to referring the complaint to the Board of Ethics and Campaign Practices. If the complaint is resolved by informal methods or a voluntary compliance agreement, the City Clerk shall give written notice to the Board and the Complainant of the details of the resolution.
  - g. If the City Clerk is unable to correct the violation or prevent further violations informally within 15 calendar days of the filing of the complaint, the City Clerk shall refer the complaint to the Board of Ethics and Campaign Practices. The City Clerk shall give written notice to the Complainant and the Respondent of the referral of the complaint to the Board.



- h. In the event of an informal resolution, Complainant may file a new complaint with the City Clerk within ten days of receiving notice of the resolution. The Complaint must meet all of the requirements of subpart a(2)(i)-(x) of this Part.
2. If the Board of Ethics determines that the Complainant knowingly or recklessly filed a false certification, the Board may require a person who files a complaint with a false certification to:
    - a. Pay the Respondent some or all of the expenses, including, but not limited to, reasonable attorney fees, incurred by that person as a direct result of the filing of the complaint; and
    - b. Pay the maximum allowable civil fine.

## **PART J POLICY ON PAYING CAMPAIGN FUNDS TO FAMILY MEMBERS**

1. **Disclosing A Payment To A Member Of The Candidate's Family Or Household**
  - a. If a candidate uses campaign funds to pay or reimburse a member of the candidate's Immediate Family or household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for Expenditures) of the campaign finance report.
  - b. Candidates seeking eligibility for public financing pursuant to the OEEC, and Participating Candidates pursuant to the OEEC, have additional disclosure requirements. Please see the 2019 OEEC Rules.
  - c. Please note that a candidate's campaign-related childcare is a legitimate campaign Expenditure , provided it is not provided by a member of the candidate's Immediate Family.

## **PART K USE OF PUBLIC RESOURCES BY CANDIDATES CURRENTLY HOLDING OFFICE**

1. In addition to the prohibitions on the use of public property and city employees contained in Article XII, Sections 6 and 7, the following regulations apply to all elected officials running for any office covered by the Election Code or Open and Ethical Elections Code:
  - a. The Board of Ethics may assess penalties for violations of Article XII, Sections 6 and 7, and consider such violations as In-Kind Contributions that will count towards a candidate's Expenditure limit.
  - b. Elected officials who are candidates may not include campaign information on their official website, and may not link to their official website from their campaign website.
  - c. Mass Communications distributed within three (3) months of an election using government resources must not:
    - i. Contain campaign-related, electioneering, or promotional language; or
    - ii. Contain contact information for the elected official's campaign.
  - d. Elected official's travel may be paid for with governmental funds only if the *primary purpose* of the trip is the conduct of *official business*. As a general matter, an elected

official, while on official travel, may engage in incidental campaign or political activity, provided that no additional travel expenses are incurred as a result. However, when the primary purpose of a trip is in fact the conduct of campaign or political activity, then the travel expenses must be paid with campaign funds and cannot be paid with governmental funds.

- e. An elected official may make nonpartisan voter registration information available in the elected official's office, but may not make campaign materials available in the elected official's office.

## PART L STATE CAMPAIGN FINANCE ACCOUNTS

1. Pursuant to NMSA 1978 Section 1-19-26(H), municipal elections are not covered elections under the Campaign Reporting Act, thus individuals with state campaign finance account funds may not use those funds to make expenditures in any City election, nor may state campaign finance account funds be transferred to a City campaign finance account.

Approved:

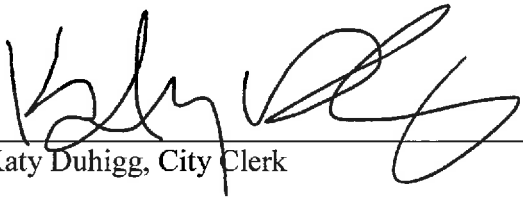


\_\_\_\_\_  
Sarita Nair, Chief Administrative Officer

Date

3/11/19

Recommended:



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

Date

3-10-19